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165-194

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 337.

PHILADELPHIA BAR ASSOCIATION

HENRY SANFORD, PRESIDENT OF THE ADAMS EXPRESS COMPANY, APPELLANT,

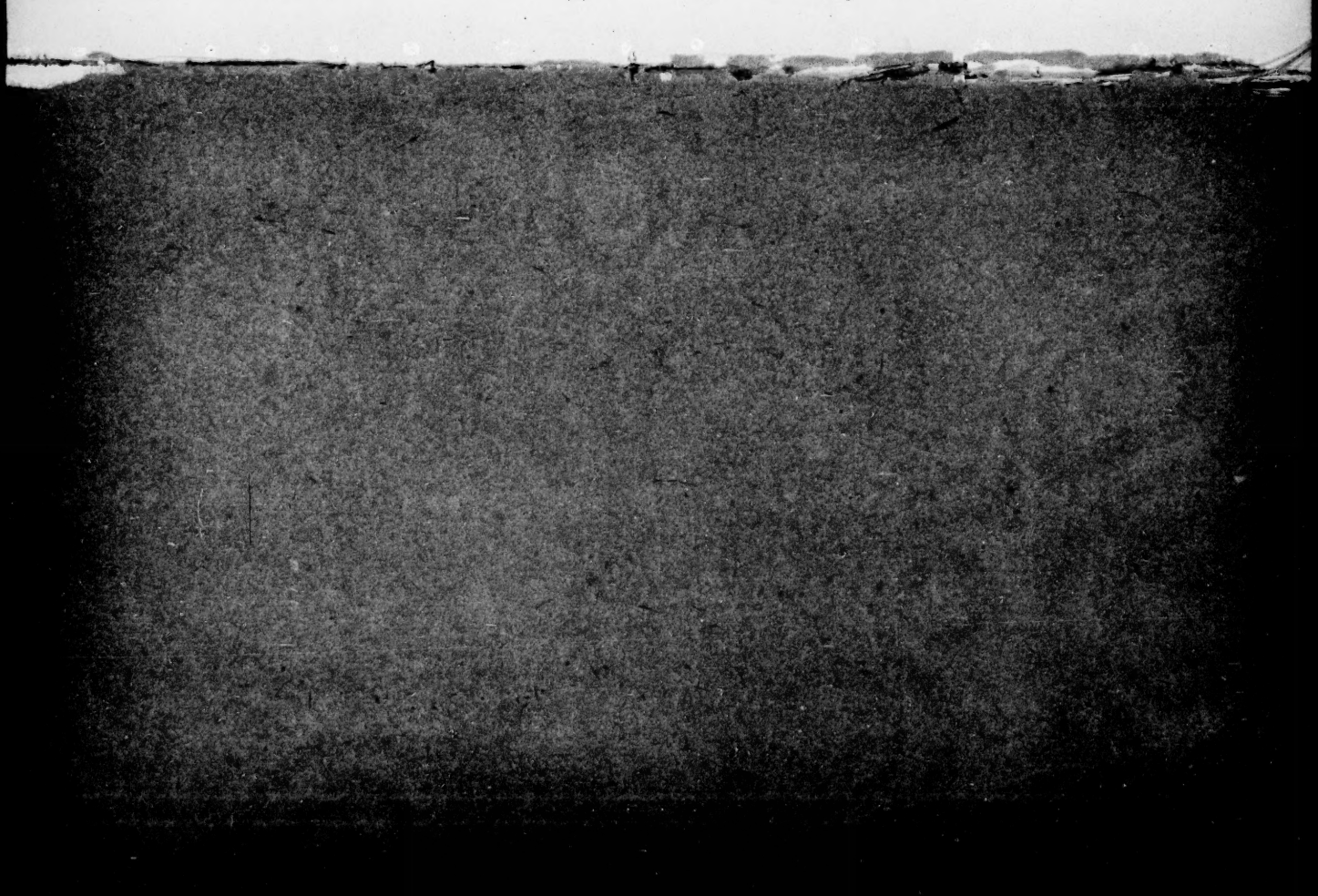
vs.

EBENEZER W. POE, AUDITOR OF THE STATE OF OHIO, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED SEPTEMBER 23, 1895.

(16,027.)



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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Eastern Division, } *ss:*

At a stated term of the circuit court of the United States of America, within and for the eastern division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms at the city of Columbus, Ohio, in said district, on the first Tuesday of December, being the fourth day of that month, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth—

Present: The Honorable William H. Taft, circuit judge—

Among the proceedings had were the following, to wit:

THE ADAMS EXPRESS COMPANY, a Joint Stock Company under the Laws of New York, by Its President, Henry Sanford, Complainant,
vs.
EBENEZER W. POE, Auditor of the State of Ohio; John K. Richards, Attorney General of the State of Ohio, and William T. Cope, Treasurer of the State of Ohio, Defendants.
} No. 673. In Chancery.

Be it remembered that heretofore, to wit, on the 23rd day of November, in the year of our Lord one thousand eight hundred
2 and ninety-three, came the complainants by their solicitors, and filed in the clerk's office of said court their certain bill of complaint against the defendants herein. Said bill of complaint is clothed in the words and figures following, to wit:

Bill of Complaint.

Circuit Court of the United States for the Southern District of Ohio and the Eastern Division Thereof.

THE ADAMS EXPRESS COMPANY, a Joint Stock Company under the Laws of New York, by Its President, Henry Sanford, Complainant,
vs.
EBENEZER W. POE, Auditor of the State of Ohio; John K. Richards, Attorney General of the State of Ohio, and William T. Cope, Treasurer of the State of Ohio, Defendants.
} Bill of Complaint. In Equity.

1. Humbly complaining, your orator showeth unto the court that it is a joint stock association, organized under the laws of the State of New York, and that it is one of the provisions of said law that

said company may sue by its president, the act passed by the legislature of the State of New York, of April 7th, 1849, being as follows:

"Any joint stock company or association, consisting of seven or more shareholders or associates, may sue or be sued in the name of the president, or treasurer, for the time being of such joint stock company or association; and all suits and proceedings so prosecuted by or against said joint stock company or association, and the service of all process or papers in such suits and proceedings, on the president or treasurer for the time being of such stock company or association, shall have the same force and effect, as regards the joint rights, property and effects of said joint stock company or association, as if the suits and proceedings were prosecuted in the name of all the shareholders or associates, in the manner now pro-
3 vided by law. No suit so commenced shall abate by reason of the death, removal or resignation of such president or treasurer of such joint stock company or association, or the death or legal incapacity of any shareholder or associate during the pendency of such suit; but the same may be continued by or against the successor of the officer in whose name such suit shall have been commenced. * * * No death, removal or resignation of officers or shareholders, or sale or transfer of stock, shall work a dissolution of any such joint stock company or association, as against the party sueing or being sued by such company, as herein provided."

2. Said Henry Sanford is now president of said company, and is a citizen of New York, and none of the owners of shares in the complainant are residents or citizens of the State of Ohio, and there are more than seven shareholders in said company, viz—more than 2,000 and they are too numerous to be joined as parties plaintiff and are entitled to sue by their said president.

3. Your orator further shows that the defendants are citizens and residents of the State of Ohio, residing in the southern district of said State; that the said Ebenezer W. Poe is the auditor of the State of Ohio; that the said John K. Richards is the attorney general of said State; and that the said William T. Cope is the treasurer thereof.

4. Your orator further shows unto the court that the business of your orator is that of transporting goods, wares and merchandise; that it conducts said business in the State of Ohio, and in many other States, and that its business is principally interstate, to wit, the transportation of goods, wares and merchandise from one State to another, although it does transport such freight from one point to another in the State of Ohio. That its principal office is in the city of New York, in the State of New York.

5. Your orator further shows that on April 27th, 1893, the General Assembly of the State of Ohio passed a bill for the taxation of express, telephone and telegraph companies, doing business in the State of Ohio, by the terms of which the auditor, attorney general and treasurer of said State are designated as "a board of appraisers and assessors for such express, telephone and telegraph companies," and the auditor of said State is designated as presi-

dent of said board. A true copy of said bill is herewith
4 filed, marked Exhibit "A." Said bill, by its terms, requires the said board to value and assess the property of such companies in the following manner, to wit:

"SEC. 2778*a*. Every express, telegraph and telephone company embraced in section 2777 whether chartered by the laws of this State or any other State or country, doing business in this State, shall, annually, between the first and tenth days of May, return to the auditor of State, under the oath of its treasurer, the amount of its capital stock, its place of business, the par value and market value (or if there be no market value, then the actual value) of its shares at the time of said return. The return shall also contain a statement in detail of the entire real and personal property of said companies and where located and the value thereof as assessed for taxation; and telegraph and telephone companies, shall, in addition thereto, return the whole length of their lines, and the length of so much of their lines as is without and is within the State of Ohio, which lines shall include what said telegraph and telephone companies control and use under lease or otherwise; and said board of appraisers and assessors shall, in determining the value of the property of said companies in this State, to be taxed within the State and assessed as herein provided, be guided by the value of said property as determined by the value of the entire capital stock of said companies, and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said companies within the State of Ohio, in the proportion which the same bears to the entire property of said corporation, as determined by the value of the capital stock thereof, and the other evidence and rules as aforesaid. Express companies shall, in making said return, include therein, as a part thereof, a statement of their entire gross receipts for the year ending the 1st day of May of the business done within the State of Ohio, giving the receipts of each office in said State, and the location thereof for said year."

6. It is claimed by the said defendants that the said bill became a law on said date, and that it is now in full force, and that they constitute a board of appraisers and assessors for express, telegraph and telephone companies, in accordance with its said terms and they are now acting as such.

7. Your orator further shows unto the court, that at the
5 request of said Ebenezer W. Poe, auditor of State, and as a matter of courtesy to him, and to said alleged board, but denying his right to require any report from it under said alleged law, your orator prepared and filed with him a statement for the year A. D. 1893 of the amount of its capital and property and of its gross receipts in each county of the State of Ohio, and the market value of its shares; said report contained a statement of all the property owned by said company in the State of Ohio, and where located, and the amount at which the same was assessed for taxation. Acting upon the information contained in said report, and upon such additional information as the board obtained from other

sources, unknown to your orator, the said defendants, acting as such alleged board of appraisers, have made an appraisement and assessment against your orator, fixing the amount upon which it shall be required to pay taxes in the State of Ohio, in accordance with the requirements of said statute, at the sum of $460,033.08 and threaten to certify the same to the auditors of the various counties and cities as directed by said statute; and the said defendants are about to apportion the amount of such appraisement and assessment among the several counties in which your orator does business, in the proportion that the gross receipts of your orator from its business in each of said counties bear to its entire gross receipts in said State, and unless restrained by the order of this court, they will make said certification to the auditors of sixty-seven counties who will at once, as required by said pretended law, certify the same to the respective treasurers of each of said counties for collection, as said company does business in sixty-seven counties in said State, and it will be necessary to bring suits in each of said counties to enjoin the collection of said assessment.

The rate of taxation in Ohio for the year 1893 varies, according to the county, from two and one-half to three per cent. so that the aggregate assessment against your orator upon said illegal and excessive appraisement will amount to between $12,000 and $14,000, and in one or more counties will exceed $2,000.

8. Your orator further shows unto the court that it owns no lines of railroad in the State of Ohio, but that it conducts its business upon many lines of railroad, under contract with the owners of said railroads. That it owns no real estate in said State, except such as is used for stabling horses used by it in the collection and distribution of goods, wares and merchandise, and that its personal property in said State consists entirely of office furniture and
6 tools and horses and wagons. That the total value of its personal property in the State of Ohio does not exceed the sum of $53,500.00 and your orator is able, ready and willing to pay all lawful taxes that may be assessed against it on account thereof; and that the total value of its real estate within the said State does not exceed $25,170.00, and that is assessed in Hamilton county as real estate, and all taxes thereon paid to date.

9. Your orator further shows unto the court that the said pretended law is unconstitutional and void in this: That it does not provide a method for the taxation of property according to its true value in money, but is really an attempt to enforce against express, telegraph and telephone companies, the payment of a tax for the privilege of doing business within the said State, by placing a fictitious value upon their property, which is not authorized by the constitution of the State of Ohio, which requires that the general revenue of said State shall be raised from the taxation of property only, and that all property shall be assessed for taxation at its true value in money.

10. Your orator further shows unto the court that the scheme of taxation, set forth in said alleged law, while professing to require the taxation of property in the State of Ohio, does not in fact do so,

inasmuch as it directs the said board of appraisers and assessors, in ascertaining and assessing the value of the property of express companies in Ohio, to be "guided by" and to "determine the value" of the company's property in the said State "by the value of the company's capital stock," and your orator states that the value of its capital is fixed and determined by the nature, extent and uses of its property not only in Ohio, but in many other States of the United States; and by the skill, diligence, fidelity and success with which its business is conducted in all these States; your orator employs many thousands of men, who are constantly engaged as messengers in carrying goods, wares and merchandise from one part of the country to another, and otherwise, and its income is largely the result of their efforts; that it owns valuable securities of other companies, and holds valuable contracts and business arrangements with other corporations, and all of these, none of which are held or owned in the State of Ohio, and many of them not taxable at all

7 together with the good will which it has earned in the course of more than fifty years of service to the public, in said business, go to make up the value of the shares of its capital.

The whole number of shares in the said company is one hundred and twenty thousand, and the market value of the said shares has been generally during the past year much above their par value, ranging from $1.40 to $1.50 upon the dollar, a price very much above the actual value of all the property of said company. Notwithstanding the premises, the said defendants, in making said valuation and assessment, were guided by the value of one share of your orator as capital, and in all other respects as directed by the said act of April 27th, 1893.

11. Your orator further shows unto the court that the said pretended law is a tax upon interstate commerce, inasmuch as it attempts to establish an artificial and fictitious basis for the valuation for taxation of the property of your orator in this State, a valuation which is determined by the value of its property in other States, and by reference to its earnings and gains in other States, and by reference in part to its earnings and gains in this State from business which is largely interstate.

12. Your orator further shows that said attempted method of taxation is unfair, unjust and unequal, inasmuch as it requires your orator to pay taxes in Ohio upon property situated in other States upon which it pays taxes according to its value, and upon its gains and earnings in localities outside of the State of Ohio, in which its gains and earnings are very much larger than those derived from an equal number of miles of lines operated by it in Ohio. And the said pretended method of valuing the property of express, telephone and telegraph companies is not observed in the valuation of any other property in said State.

13. Your orator further shows unto the court that the method of taxation prescribed in said pretended law, would, if enforced against it, destroy the value of its business in Ohio, and compel it to abandon the said State, to its great and irreparable damage.

14. To the end that a multiplicity of suits may be avoided, and that the injury threatened, as above set forth, may be averted, your orator prays the court to take jurisdiction of this cause to cause the writ of subpœna to issue to the defendants to appear and make full and true answer to this bill, but not under oath, and upon the final hearing of the cause they may be perpetually enjoined from
8–12 certifying the said appraisements and assessments to the auditors of any of the counties of Ohio, that in the meantime an injunction pending the suit, to the same effect may be granted, and that upon the said final hearing it may have such further just relief as it may appear to be entitled to.

RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

Bill is endorsed as follows:

Let an order issue for a temporary restraint of the defendants in accordance with the prayer of the bill, the same to continue in force until the hearing or disposition of complainant's motion for a temporary injunction which shall be filed within forty-eight hours after the entry of said order. Notice of the filing of the motion shall be given forthwith after the filing thereof to each of the defendants or their attorneys.

GEO. R. SAGE,
U. S. District Judge, S. D. O.

November 23, 1893, 12 m.

And afterwards, to wit, on the 23rd day of November, A. D. 1893, the following Exhibit "A" was filed in the clerk's office of said court, clothed in the words and figures following, to wit:
(Omitted in printing per stipulation of counsel. See side p. 135.)

* * * * * * *

13 And afterwards, to wit, on the 23rd day of November, A. D. 1893, the following Exhibit "B," was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

14 EXHIBIT "B."

(Copy.)

ADAMS EX. CO.
vs.
POE *et al.*

1893.

Annual Statement of the Property.

The Adams Express Company, a copartnership transacting an express business on railway routes between Boston, Mass., and Denver, Col., subject to taxation in the State of Ohio, as required by section- 2777, '8, '9, 2780 of the Revised Statutes as amended and supplemented by an act passed April 27th, 1893, as existing on the 1st day of May, 1893.

AUDITOR OF STATE'S OFFICE, COLUMBUS, OHIO.

To express, telegraph, and telephone companies:

This form is submitted to you for the purpose of procuring property statements from each express, telegraph, and telephone company doing business in Ohio. All statements furnished must be made on this blank, and the items called for therein must be given in full. This report must be made out and sworn to by the treasurer of such company, and filed in the auditor of State's department on or before May 10th of each year.

Respectfully,

E. W. POE,
Auditor of State.

On the first day of May, 1893, said copartnership had its place of business at all principal places on said route.

Its capital stock was..... ... .
The whole number of its shares was..... .....
The par value of each share was. .. ..
See treasurer's report.

The market value of each share was ....
(If there be no market value give the actual cash value.)

The taxable value of the real estate and personal property owned by the corporation within the State..... $53,080 74
Whole length of lines under lease or otherwise.....
Length of lines under lease or otherwise without the State..... ....
Length of lines under lease or otherwise within the State.

Express companies.

The total amount of gross receipts within the State, $175,034.00.

15 SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'te & build'gs as ass'ss'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Adams	Irvington			$6 30		
	Manchester			12 00		
	Newport			8 40		
	Peebles			16 35		
	Rome			1 75		
	Seaman			21 70		
	West Union			7 70		
	Winchester			35 80		
				$110 00		
Allen	Delphos			$43 95		
	Elida			7 25		
	Lima			602 00		
				$653 20		
Ashland	Loudonville			$14 85		
	Perrysville			7 20		
				$22 05		
Ashtabula	Ashtabula			$62 20		
	Austinburg			8 40		
	Eaglesville			9 10		
	East Orwell			39 50		
	Harbor			11 90		
	New Lyme			13 30		
	Rock Creek			20 65		
	Rome			23 10		
				$188 15		
Athens	Athens			$33 40		
	Buchtel			26 20		
	Glen Ebon			1 00		
	Glouster			28 90		
	Nelsonville			26 00		
				$115 50		

16

Belmont	Bellaire			$43 90		
	Bridgeport			53 00		
	Kelsey			1 00		
	Martin's Ferry			36 70		
				$134 60		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as assess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Brown	Eastwood			$9 10		
	Mt. Orab			22 00		
	Sardinia			39 90		
	So. Fincastle			8 40		
				$79 40		
Butler	Collinsville					
	Hamilton			$860 00		
	Middletown			46 80		
				$906 80		
Carroll	Augusta			$8 35		
	Malvern			7 70		
	Mechanicstown			9 10		
	Oneida			24 00		
	Wattsville			1 00		
				$50 15		
Champaign	Cable			$17 50		
	Fountain Park			1 40		
	St. Paris			24 20		
	Urbana			241 00		
	Westville			1 00		
	Woodstock			1 00		
				$286 10		
17						
Clarke	Selina			$18 80		
	So. Charleston			61 25		
	Springfield			1,398 45		
				$1,478 50		
Clermont	Batavia			$34 40		
	Branch Hill			1 40		
	Loveland			10 50		
	Milford			7 00		
	New Richmond			36 70		
	Williamsburg			34 95		
				$124 95		
Clinton	Clarksville			$1 00		
	Ogden			1 00		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'sd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
.. ..	Sabina	.....	.....	$1 00		
.....	Wilmington.....	.....	.....	203 60		
				$206 60		
Columbiana	Bayard.....	.....	.....	$46 70		
....	Columbiana.....	.....	.....	33 30		
....	East End.....	.....	.....	7 70		
....	East Liverpool...	.....	.....	411 10		
....	East Palestine.....	.....	.....	10 50		
....	East Rochester.....	.....	.....	1 00		
....	Homeworth.....	.....	.....	1 00		
....	Kensington.....	.....	.....	25 90		
....	Leetonia	.....	.....	37 00		
....	Mill Rock.....	.....	.....	11 35		
....	Moulton.....	.....	.....	1 00		
....	New Lisbon.....	.....	.....	35 15		
....	Salem.....	.....	.....	576 00		
...	Salineville.....	.....	.....	46 30		
....	Signal.....	.....	.....	7 70		
....	Summitville	.....	.....	1 00		
....	Wellsville.....	.....	.....	108 20		
				$1,360 90		
18						
Coshocton.....	Blissfield.....	.....	.....	$$1 25		
.....	Conesville.....	.....	.....	1 40		
.....	Cooperdale.....	.....	.....	1 00		
.....	Coshocton	.....	.....	54 37		
.....	Isfata	.....	.....	1 40		
.... .	Layland	.....	.....	1 75		
.....	Tunnel Hill.....	.....	.....	1 00		
.....	Wakatomika	.....	.....	11 90		
. ....	Warsaw.....	.....	.....	11 90		
.....	West Lafayette.....	.....	.....	70		
				$86 67		
Crawford.....	Bucyrus.....	.....	.....	$295 00		
.....	New Washington.....	.....	.....	7 00		
.....	Tiro	.....	.....	7 70		
				$309 70		
Cuyahoga.....	Bedford.....	.....	.....	$1 00		
.....	Cleveland	.....	.....	6,101 70		
.....	Newburg.....	.....	.....	12 60		
				$6,115 30		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real es'te & build'gs as ass'ess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Darke	Greenville			$154 00		
	Horatio			1 40		
	New Madison			1 40		
	Pikeville			75		
	Woodington			1 00		
19				$158 55		
Delaware	Condit			$1 00		
	Galena			11 90		
	Sunbury			1 00		
				$13 90		
Fairfield	Bremen			$1 00		
	Carroll			18 90		
	Lancaster			354 25		
	Stoutsville			1 00		
	Sugar Grove			1 00		
				$376 15		
Fayette	Washington C. H			$287 90		
Franklin	Canal Winchester			$18 10		
	Columbus			3,822 50		
	Groveport			9 10		
	Hilliards			1 40		
	Lockbourne			8 35		
	Marble Cliff			1 50		
	Westerville			35 60		
				$3,896 55		
Gallia	Addison			$1 00		
	Alice			1 00		
	Bidwell			1 00		
	Cheshire			1 00		
	Ewington			11 80		
	Gallipolis			177 80		
	Vinton			1 00		
20				$194 60		
Greene	Cedarville			$22 40		
	Roxanna			1 00		
	Spring Valley			8 40		
	Xenia			423 25		
	Yellow Springs			6 30		
				$461 35		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Guernsey	Cumberland			$9 10		
Hamilton	Cincinnati			$16,045 15		
	Columbia			1 40		
	Linwood			1 40		
	Newtown			1 00		
	Norwood Heights			1 40		
	Terrace Park			11 30		
				$16,061 65		
Hardin	Ada			$17 65		
	Dunkirk			23 10		
	Forest			28 05		
				$68 80		
Harrison	Bowerston			$29 40		
	Cadiz			19 25		
	Cadiz Jct			76 02		
	Conotton			1 40		
	Jewett			11 90		
	Millers			8 40		
	Phila Roads			11 90		
	Scio			22 05		
				$180 32		
21						
Highland	Hillsboro			$89 60		
	Taylorsville			1 00		
				$90 60		
Hocking	Brashears			$1 00		
	Carbon Hill			1 00		
	Greendale			1 00		
	Haydenville			1 00		
	Jobs			28 85		
	Logan			61 00		
	Longstreth			1 00		
	Monday			1 00		
	Murray City			1 00		
	New Pittsburgh			1 75		
	Rockbridge			1 00		
	Union F'ce			1 00		
				$100 60		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as assess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Holmes	Holmesville			$20 00		
	Stilbuck			64 75		
	Millersburg			27 10		
	Pictoria			18 90		
				$130 75		
22						
Jefferson	Bergholz			$1 00		
	Bloomfield			1 40		
	Brilliant			1 40		
	Browns			1 00		
	Empire			13 80		
	Hammondsville			1 00		
	Irondale			3 50		
	Mingo Jct			25 20		
	Port Homer			8 30		
	Portland			1 75		
	Rush Run			1 00		
	Skelleys			1 40		
	Steubenville			627 45		
	Toronto			9 75		
	Unionport			11 90		
				$709 85		
Knox	Bangs			$8 40		
	Brinkhaven			17 50		
	Centerburg			31 30		
	Danville			23 90		
	Gambier			1 90		
	Howard			19 60		
	Mt. Liberty			1 00		
	Mt. Vernon			300 90		
				$404 50		
Lawrence	Coal Grove			$1 25		
	Ironton			230 00		
				$231 25		
23						
Licking	Hanover			$1 40		
	Kirkersville			1 40		
	Newark			365 50		
	Union Sta			1 00		
				$369 30		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real es'te & build'gs as ass'sed for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Guernsey	Cumberland			$9 10		
Hamilton	Cincinnati			$16,045 15		
	Columbia			1 40		
	Linwood			1 40		
	Newtown			1 00		
	Norwood Heights			1 40		
	Terrace Park			11 30		
				$16,061 65		
Hardin	Ada			$17 65		
	Dunkirk			23 10		
	Forest			28 05		
				$68 80		
Harrison	Bowerston			$29 40		
	Cadiz			19 25		
	Cadiz Jct			76 02		
	Conotton			1 40		
	Jewett			11 90		
	Millers			8 40		
	Phila Roads			11 90		
	Scio			22 05		
				$180 32		
21						
Highland	Hillsboro			$89 60		
	Taylorsville			1 00		
				$90 60		
Hocking	Brashears			$1 00		
	Carbon Hill			1 00		
	Greendale			1 00		
	Haydenville			1 00		
	Jobs			28 85		
	Logan			61 00		
	Longstreth			1 00		
	Monday			1 00		
	Murray City			1 00		
	New Pittsburgh			1 75		
	Rockbridge			1 00		
	Union F'ce			1 00		
				$100 60		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as assess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Holmes	Holmesville			$20 00		
	Stilbuck			64 75		
	Millersburg			27 10		
	Pictoria			18 90		
				$130 75		
22						
Jefferson	Bergholz			$1 00		
	Bloomfield			1 40		
	Brilliant			1 40		
	Browns			1 00		
	Empire			13 80		
	Hammondsville			1 00		
	Irondale			3 50		
	Mingo Jct			25 20		
	Port Homer			8 30		
	Portland			1 75		
	Rush Run			1 00		
	Skelleys			1 40		
	Steubenville			627 45		
	Toronto			9 75		
	Unionport			11 90		
				$709 85		
Knox	Bangs			$8 40		
	Brinkhaven			17 50		
	Centerburg			31 30		
	Danville			23 90		
	Gambier			1 90		
	Howard			19 60		
	Mt. Liberty			1 00		
	Mt. Vernon			300 90		
				$404 50		
Lawrence	Coal Grove			$1 25		
	Ironton			230 00		
				$231 25		
23						
Licking	Hanover			$1 40		
	Kirkersville			1 40		
	Newark			365 50		
	Union Sta.			1 00		
				$369 30		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

Names of counties.	Names of townships, cities, villages, and special school districts.	1 Value of real est'e & build'gs as ass'ss'd for taxa'n.	2 Totals of column 1 in county.	3 Value of personal property as assessed for taxation.	4 Totals of column 2 in county.	5 Totals of columns 2 & 4 in Co.
Lucas	Toledo			$2,350 00		
Madison	London			68 60		
	Plain City			27 10		
	West Jefferson			19 35		
				$115 05		
Mahoning	Beloit			$6 85		
	Berlin Centre			1 00		
	Ellsworth			4 55		
	Lowellville			1 00		
	No. Benton			11 80		
	No. Jackson			3 50		
	Rosemont			1 00		
	Snodes			1 25		
	Struthers			1 00		
	Youngstown			665 80		
				$697 75		
Meigs	Middleport			$11 35		
	Pomeroy			48 20		
				$59 55		
Miami	Bradford			$53 10		
	Conover			1 40		
	Covington			2 25		
	Fletcher			35 10		
	Piqua			305 00		
				$396 85		
Monroe	Baresville			$1 90		
	Beallsville			1 00		
	Cochransville			1 25		
	Jerusalem			1 00		
	Lewisville			1 00		
	Sardis			1 90		
	Woodsfield			1 00		
				$9 05		
Montgomery	Brookville			$11 90		
	Dayton			2,538 35		
	Miami City			26 45		
				$2,576 70		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Morgan	Deavertown			$11 80		
	Durant			1 25		
	Eaglesport			1 75		
	Hooksburg			8 20		
	Malta			55 30		
	McConnellsville			25 20		
	Shawnee Jct.			1 75		
	Stockport			8 65		
	Triadelphia			1 00		
				$114 90		
25						
Muskingum	Black Run			$1 40		
	Chandlersville			1 00		
	Dresden			1 40		
	Frazeysburg			21 50		
	Freeland			1 30		
	Gaysport			8 30		
	Philo			1 25		
	Roseville			1 00		
	Sealover			1 25		
	Spratt			1 00		
	Trinway			169 00		
	Zanesville			790 90		
				$999 30		
Noble	Belle Valley			$1 00		
	Caldwell			9 10		
	Mt. Ephraim			8 65		
	Summerfield			19 85		
				$38 60		
Perry	Buckingham			$1 00		
	Congo			18 50		
	Coming			14 70		
	Crooksville			1 00		
	Hemlock			1 75		
	Junction City			43 40		
	McLuney			8 35		
	New Lexington			44 10		
	New Straitsville			9 00		
	Rendville			1 40		
	Shawnee			29 10		
				$172 30		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as assess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
26						
Pickaway	Ashville			$1 80		
	Atlanta			1 00		
	Circleville			389 60		
	Duvall			1 00		
	Kinderhook			1 00		
	New Holland			1 00		
	Williamsport			19 40		
				$414 80		
Pike	Omega			$1 00		
	Piketon			18 90		
	Wakefield			1 00		
	Waverly			24 60		
				$45 50		
Portage	Atwater			$13 65		
	Deerfield			8 35		
	Earlville			1 60		
	Palmyra			9 10		
	Ravenna			220 10		
	Rootstown			10 50		
				$263 30		
Preble	Eaton			$9 25		
	El Dorado			6 85		
	New Paris			7 70		
	West Manchester			1 40		
				$25 20		
Richland	Lucas			$1 00		
	Mansfield			904 50		
				$905 50		
27						
Ross	Chillicothe			$358 35		
	Higby			1 00		
	Kingston			1 00		
				$360 35		
Sandusky	Helena			$1 40		
	Woodville			1 00		
				$2 40		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'ess'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Scioto	Franklin F'ce			$1 00		
	Haverhill			1 00		
	Lucasville			1 00		
	Otway			2 10		
	Portsmouth			625 50		
	Rarden			8 40		
	Sciotoville			1 00		
	Wheelersburg			1 00		
				$641 00		
Seneca	Bloomville			$1 00		
	Carrothers			6 30		
	Linden			1 00		
	Tiffin			527 00		
				$535 30		
Stark	Alliance			$1,261 25		
	Canton			1,462 35		
	Louisville			9 80		
	Magnolia			1 00		
	Massillon			256 50		
	Maximo			1 00		
	Minerva			30 00		
	Paris			1 00		
	Waynesburg			17 85		
				$3,040 75		
28						
Summit	Akron			$946 25		
	Barberton			12 15		
	Clinton			1 00		
	Cuyahoga Falls			49 75		
	Hudson			154 80		
	Macedonia			9 75		
	So. Akron			1 25		
				$1,174 95		
Trumbull	Bristolville			$18 90		
	Girard			7 70		
	Newton Falls			9 95		
	Niles			40 55		
	No. Bloomfield			33 30		
	Warren			140 35		
				$250 75		

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		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
Tuscarawas	Canal Dover			$42 15		
	Dennison			39 40		
	Lock No. 17			1 50		
	Mineral Point			1 25		
	New Comerstown			286 50		
	New Phila			26 00		
	Port Washington			41 30		
	Uhrichsville			65 35		
				$503 45		
Union	Milford Centre			$7 00		
	Unionville			17 50		
				$24 50		
29						
Van Wert	Convoy			$23 10		
	Dixon			17 50		
	Middle Point			29 30		
	Van Wert			143 90		
				$212 90		
Vinton	Creola			$1 00		
	Hawk's			1 00		
	McArthur			10 15		
	Minerton			1 75		
	Radcliff			7 85		
				$21 75		
Warren	Foster's			$1 40		
	Kings Mills			1 75		
	Lebanon			6 10		
	Morrow			30 10		
	Oregonia			1 40		
	So. Lebanon			22 05		
	Waynesville			26 40		
				$89 20		
Washington	Eanity			$1 25		
	Lowell			2 60		
	Marietta			254 10		
	Relief			5 45		
	Swift's			8 05		
	Waterford			25 10		
				$296 55		

SCHEDULE A.—Detailed Statement of the Value of the Real and Personal Property as Assessed for Taxation in Each Township, City, Village, and Special School District, with Total for Each County.

		1	2	3	4	5
Names of counties.	Names of townships, cities, villages, and special school districts.	Value of real est'e & build'gs as ass'd for taxa'n.	Totals of column 1 in county.	Value of personal property as assessed for taxation.	Totals of column 2 in county.	Totals of columns 2 & 4 in Co.
30						
Wayne	Apple Creek			$11 90		
	Big Prairie			17 40		
	Fredericksburg			15 45		
	Marshallville			1 00		
	Orrville			334 60		
	Shreve			11 90		
	Wooster			324 20		
				$716 45		
Wyandot	Nevada			$23 10		
	Upper Sandusky			28 70		
				$51 80		

SCHEDULE D.

Schedule of Return of Gross Receipts of Express Companies as Contemplated by Section 2778a of Revised Statutes of Ohio as Amended April 27th, 1893.

Schedule D not included in transcript. By order of court. See final entry, page 135 of transcript No. 673.

This report is respectfully made under protest. The law of April 27th, 1893, being in the judgment of said company unconstitutional and void.

31 THE STATE OF OHIO, } ss :
County of Franklin, }

On the 22nd day of May, A. D. 1893, personally appeared before me the undersigned, John A. Robinson, a notary public in and for said Franklin county, H. Bemple, who, being duly sworn, says that he is the superintendent of the Adams Express Company, and that the foregoing statement is correctly taken from the books of said company, and is true to the best of his knowledge and belief.

(Signed) H. BIMPLE,
Sup't Adams Ex. Co.

Subscribed and sworn to before me, the day and year above written.

(Signed) JOHN A. ROBINSON,
Notary Public, Franklin Co.

And afterwards, to wit, on the 23rd day of November, A. D. 1893, there was issued out of the clerk's office of said court, our certain subpœna, directed to the marshal of the district and against the defendants herein, said subpœna is clothed in the words and figures following, to wit:

Subpœna in Chancery.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summon Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the eastern division of the southern district of Ohio, aforesaid, at Columbus, on the first Monday in February next, to answer a certain bill in chancery, filed and exhibited in said court against them by the Adams Express Company, a joint stock company, under the laws of New York, by its president,
32 Henry Sanford, citizen of and resident in the State of New York.

Hereof you are not to fail under the penalty of the law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 23rd day of November, A. D. 1893, and in the 118th year of the Independence of the United States of America.

[SEAL.]

Attest: B. R. COWEN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday of January, 1894, otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

And afterwards, to wit, on the 23rd day of November, A. D. 1893, there was issued out of the clerk's office of said court, the following restraining order, directed to the defendants herein, said restraining order is clothed in the words and figures following, to wit:

Restraining Order.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Eastern Division, }

The President of the United States of America to Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, Greeting:

Whereas, the Adams Express Company, a joint stock company under the laws of New York, by its president, Henry San-
33 ford, citizen of the State of New York, has filed on the chancery side of the circuit court of the United States for the eastern division of the southern district of Ohio, a bill against Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, William T. Cope, treasurer of the State of Ohio, and has obtained an allowance for a restraining order as prayed for in said bill.

Now *whereas*, we having regard to the matters in said bill contained, do hereby command and strictly restrain you, the said Ebenezer W. Poe, auditor of the State of Ohio; John K. Richards, attorney general of the State of Ohio, and William T. Cope, treasurer of the State of Ohio, as a board of appraisers and assessors, from certifying to auditors of counties, cities or incorporated villages, any assessment against the complainant, made in pursuance to the terms of the statute referred to in the bill of complaint, passed April 27, 1893, until the hearing of a motion by the complainant for an injunction *pendente lite*, which motion shall be filed within forty-eight (48) hours, and a copy thereof served upon each defendant. Which commands and injunctions you are respectively required to observe and obey.

Hereof fail not, under the penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, this twenty-third day of November, A. D. 1893, and in the 118th year of the Independence of the United States of America.

B. R. COWEN,
Clerk U. S. Circuit Court, S. D. O.,
By ROB'T C. GEORGI, *Deputy.*

And afterwards, to wit, on the same day as aforesaid, there was filed in the clerk's office of said court, the following motion, which motion is clothed in the words and figures following, to wit:

34 *Motion.*

United States Circuit Court, Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS COMPANY, a Joint Stock Company under the Laws of New York, by Its President, Henry Sanford,
vs.
E. W. POE *et al.*
} Motion.

Now comes the complainant and moves the court to grant an injunction *pendente lite*, restraining the defendants, their agents and servants, from certifying to the county auditors of the State of Ohio, and auditors of cities and towns in said State, or any of them, an assessment against the complainant, being the assessment set forth in the bill of complaint herein filed.

And afterwards, to wit, on the 24th day of November, A. D. 1893, came the marshal of the district to whom the aforesaid subpœna was in form directed and returned the same into the clerk's office of said court, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return of Subpœna in Chancery.

SOUTHERN DISTRICT OF OHIO, *Eastern Division,* } *ss:*

Received this writ at Columbus, Ohio, on November 24, 1893, and on the same day at Columbus, Ohio, I executed the same by delivering a true copy thereof with the endorsements thereon
35 to Ebenezer W. Poe, auditor, etc., John K. Richards, etc., and William T. Cope, treasurer, etc., defendants herein to each personally.

Fees.

3 copies	$1 50
3 serv.	6 00
1 mile	06
	$7 56

J. H. SIMMONS,
U. S. Marshal, S. D. O.,
By C. P. WHITE, *Deputy.*

And afterwards, to wit, on the same day as aforesaid, November 24, 1893, came the marshal of the district to whom the above restraining order was in form directed, and returned the same into the clerk's office of said court, with his proceedings thereon endorsed in the words and figures following, to wit:

Marshal's Return; Rest; Order.

SOUTHERN DISTRICT OF OHIO, } ss:
Eastern Division, }

Received this writ at Columbus, Ohio, on November 24, 1893, and on the same day at Columbus, Ohio, I executed the same by delivering a true copy thereof with all endorsements thereon to Ebenezer W. Poe, auditor, etc., John K. Richards, attorney general, etc., and William T. Cope, treasurer, etc., defendants herein to each personally.

Fees.

3 copies	$1 50
3 services	6 00
1 mile	06
	$7 56

J. H. SIMMONS,
U. S. Marshal, S. D. O.,
By C. P. WHITE, *Deputy.*

And afterwards, to wit, on the 20th day of December, A. D. 1893, the following demurrer was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

36 *Demurrer.*

Circuit Court of the United States for the Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS CO., a Joint Stock Company under the Laws of New York, by Its President, Henry Sanford, Complainant,
vs.
EBENEZER W. POE, Auditor of the State of Ohio; John K. Richards, Attorney General of the State of Ohio, and William T. Cope, Treasurer of the State of Ohio, Defendants.

Case No. 673. In Equity.

The demurrer of the above-named defendants to the bill of complaint of the above-named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said bill. And for cause of demurrer showeth:

That it appeareth by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed by the bill against these defendants.

Wherefore, and for divers other good causes of demurrer appearing on the said bill these defendants do demur thereto. And they pray the judgment of this honorable court, whether they shall be compelled to make any answer to the said bill, and they humbly pray that said bill be dismissed with their reasonable costs in this behalf sustained.

J. K. RICHARDS,
Attorney General of Ohio.
THOS. McDOUGALL,
Sol. and of Counsel for D'f'ts.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

J. K. RICHARDS,
Of Counsel for Defendants.

37 THE STATE OF OHIO, } ss:
Franklin County, }

Ebenezer W. Poe, being duly sworn deposes and says: I am one of the above-named defendants. The foregoing demurrer is not interposed for delay.

EBENEZER W. POE.

Sworn to before me this 20th day of December, 1893.

JNO. L. LOTT,
[SEAL.] *Notary Public, Franklin County, Ohio.*

And afterwards, to wit, on the 20th day of December, A. D. 1894, the following affidavit of Ebenezer W. Poe was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of Ebenezer W. Poe.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS COMPANY }
vs.
EBENEZER W. POE, Auditor, &c. }

STATE OF OHIO, } ss:
Franklin County, }

Ebenezer W. Poe, being first duly sworn, says that he is the duly elected, qualified and acting auditor of State of Ohio; that as such auditor he is a member of the board created by the laws of Ohio, passed April 27, 1893, and entitled "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Revised Statutes of Ohio," being the act for the taxation of express, telegraph and telephone companies. That in accordance with the provisions of said act the treasurer and attorney general of the State of Ohio, along with this affiant, constituting said board of appraisers and assessors,

duly organized as such board, and held their meetings in the office of the auditor of State. That this affiant, as auditor of State, was elected president of said board and now is president of said board. That pursuant to the instructions of said board, blank forms, of returns for taxes were furnished by him as auditor of State to each
38 and all of the companies embraced within the provisions of said law. That among said companies to whom blanks were furnished were the Western Union Telegraph Company, the Adams Express Company, and the National Express Company. That each of said companies filed with this affiant as auditor of State, their returns with accompanying statements duly verified. That said returns and statements were laid before said board of appraisers and assessors. That said companies were each advised of the meetings of said board and that said board would receive any statement or accord them any hearing that they desired. That the said express companies did have a hearing before said board, as appears by the minutes of said board, and that said Western Union Telegraph Company advised said board that it would enjoin the certification of the assessment to the various county auditors provided for by said law. That at the request of counsel for said Western Union Telegraph Company the board advised said counsel from time to time of the various steps taken by said board with reference to the valuations and assessments of the said Western Union Telegraph Company.

That all of the parties covered by said law were afforded by said board a full hearing.

Affiant further says that said board is still in session and is ready and willing at all times to hear complaints from parties covered by said law as to any inequality or excessive valuations.

After the valuation of the property of the Western Union Telegraph Company was fixed and determined by the board, and before the board attempted to certify the same to the various county auditors said company was notified of the action of the board, and opportunity afforded said company to complain to the board of any excessive valuation of its property or of any error committed in said assessment and valuation and to obtain a hearing thereon.

Counsel for the Western Union Telegraph Company, William M. Ramsey, Esq., requested said board to advise him from time to time of its action in the matter of the Western Union Telegraph Company and to inform him when the board had fixed the assessment against the Western Union Telegraph Company, in order that he might take such action or judicial proceedings or otherwise as he saw fit. Said board acceded to this request of said counsel and did inform him of its action from time to time and did advise him when the board had reached the amount to be assessed against said
39 Western Union Telegraph Company and took no action towards certifying said assessment to the various county auditors until said The Western Union Telegraph Company had ample time to take such action in the premises as it saw fit.

Affiant attaches to and makes part of this affidavit copies of the letter to affiant as president of the board of I. N. Miller, superintendent of the Western Union Telegraph Company, under date of

May 24, 1893, and also of the letter of William M. Ramsey, as counsel for the Western Union Telegraph Company, and the express companies named in this affidavit to John K. Richards as attorney general and member, of this board, under date of June 19, 1893, and the reply of said Richards to such letter. A duly certified copy is also attached and made part hereof, of the minutes of the board from May 2, 1892, to August 26, 1893, inclusive, and of October 9, November 20, and November 28, 1893, being so much of the minutes of the board as be upon the action taken by the board in the cases of the several companies involved in the suits under consideration.

EBENEZER W. POE.

Sworn to before me this 20th day of December, 1893.

JNO. L. LOTT,

[SEAL.] *Notary Public, Franklin County, Ohio.*

(Copy.)

"Western Union Telegraph Company," superintendent's office.

CINCINNATI, OHIO, *May* 24, '93.

E. W. Poe, Esq., auditor of State, Columbus, O.

DEAR SIR: We are in somewhat of an embarrassing situation in regard to making our property return to the tax commission as provided under the Nichols law. Our tax attorneys in New York have had an appointment to meet Judge Ramsey in Cincinnati for a week past, to take the matter under consideration and decide upon a plan of action. I am ready to make up the reports showing the amount of lines owned by us in the various townships and cities in the State, but have no means of furnishing a schedule of the property owned beyond the State of Ohio.

40 The tax attorney has been confined to his room for several days, but advises me his physician will consent to his leaving New York no earlier than Sunday next, arriving at Cincinnati Monday and will probably be in Columbus Tuesday. I hope you can hold matters in obeyance until that time.

Very respectfully, I. N. MILLER,

Superintendent.

(Copy.)

CINCINNATI, *June* 19, 1893.

Hon. J. K. Richards, attorney general, Columbus, Ohio.

DEAR SIR: "I have prepared a bill for injunction upon behalf of the Western Union Telegraph Company, against the treasurer, attorney general and auditor, constituting a board of appraisers, etc., to enjoin the assessment made or to be made; and desire, also, to file such a bill on behalf of the Adams Express Company, and possibly one or two, other express companies. I am obliged to go to Dayton tonight to engage in a trial which will occupy nearly all,

if not quite all, of the week and write to ask you to consent that these bills may be filed prior to the certification of the valuation to the county auditors in order that a great multiplicity of suits may be avoided. It seems to me that this arrangement would suit your convenience and promote the public welfare. We desire an early hearing of the question of the validity of the Nichols law, and we presume that you are also anxious to have an early disposition of the question. If you agree to this view, please advise me how much time I will have to get the bills filed.

Please answer this note to the care of the Beckel house, Dayton, Ohio.

Very truly yours, WM. M. RAMSEY."

41 (Copy.)

Office of the attorney general, State of Ohio.

COLUMBUS, *June* 20, 1893.

Mr. William M. Ramsey, attorney-at-law, Beckel house, Dayton, Ohio.

MY DEAR SIR: I have your favor of the 19th inst., relating to the proposed injunction suits on the part of the Western Union Telegraph Co., and the Adams Express Co., to test the constitutionality of the Nichols bill. The auditor of State and treasurer of State are both away from Columbus at present, so I cannot consult with them to ascertain their convenience in the matter. I expect to leave here for the East about the 30th of this month, and it would be most convenient to me to have the injunction suits filed early next week, if they must be filed prior to my return. I understand from your letter that you have prepared the bill on the part of the Western Union Telegraph Company, but have not yet prepared the bill on behalf of the Adams Express Company, and the other express companies. By what day can you prepare the bills for all your clients and be ready to file them? I have no objection personally, and I think there is no objection on the part of the other members of the State board of appraisers, to your filing these bills prior to the certification of the valuation to the county auditors; but I suppose it will be necessary for the board to make the valuations and certify them to the auditor of State before the filing of your suits which are to enjoin the auditor of State from certifying the valuations to the county auditors.

Is it your expectation that a final hearing in the circuit court can be secured this summer? My own preference would be for a hearing some time in August or September, preferably the latter month, which would give us time to get in the Supreme Court of the United States in October or November.

Let me have your views in the matter.

Very respectfully, J. K. RICHARDS,
Attorney General.

42 Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *May* 2, 1893.

This day the State board of appraisers and assessors of the property of express, telegraph and telephone companies doing business in Ohio, consisting of the auditor of State, the treasurer of State and the attorney general of the State of Ohio, created by the act of April 27, 1893, entitled "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Rev. Stat. of Ohio" (90 O. L. pp. 330-334), met pursuant to a call of the president of the board. Present, E. W. Poe, auditor of State and *ex officio* president of the board; W. T. Cope, treasurer of State, and J. K. Richards, attorney general.

On motion of the attorney general, the treasurer of State was appointed secretary of the board, and directed to keep full minutes of its proceedings.

After discussing the requirements of the law and the nature of the blanks to be prepared for returns under it, the auditor of State was directed to have copies of the act printed for distribution, and forms for returns prepared for submission to the board.

The auditor was also directed to secure reports from the county auditors of the property of express, telegraph and telephone companies, as assessed for taxation last year.

On motion, the board adjourned until May 5th.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *May* 5, 1893.

The board met pursuant to adjournment. Present, E. W. Poe, auditor of State; W. T. Cope, treasurer of State, and J. K. Richards, attorney general.

The minutes of the last meeting were read and approved.

Further consideration was given to the requirements of the act and the returns to be made under it.

The auditor of State was, on motion, directed to send copies
43 of the law, and blanks for returns under it, to all express, telegraph and telephone companies doing business in this State, and request them to make returns under the law at the earliest possible date.

Adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *May* 29, 1893.

The board met pursuant to call of the president, all the members being present.

The minutes of the last meeting were read and approved.

Hon. Emmett Tompkins, on behalf of the telephone companies,

appeared before the board and requested that a time be fixed when counsel for the telephone companies doing business in Ohio might be heard.

After consultation, the board named June 23rd, at 10 a. m., as the time for hearing the telephone companies and so notified Mr. Tompkins.

After further consideration of the law, and the duties of the board under it, on motion adjourned to meet June 23, 1893, at 10 a. m.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *June* 23, 1893.

Board met pursuant to adjournment. All the members present.

Mr. A. A. Thomas, general counsel of the Central Union Telephone Company of Chicago, appeared and on behalf of said company, presented its view of the proper construction of the act creating this board, and the limits of the duties of the board under it, and described in detail the character and value of the property of the company. Mr. Thomas filed with the board a printed brief to be considered in connection with his oral statement.

44 Mr. Henry Metzgar, general manager of the Pittsburgh Central District Printing and Telegraph Company, appeared, and on behalf of the company, made a statement of the character and value of its property and discussed the fair mode of assessing it by this board.

Mr. Tompkins requested to be heard on behalf of the Cleveland Telephone Company, on Monday, June 26, which was agreed to and the board, on motion adjourned until June 26, at 10 a. m.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *June* 26, 1893.

The board met pursuant to adjournment. All the members being present.

Mr. Emmett Tompkins, representing the Central Union Telephone Company of Chicago, and the Cleveland Telephone Company, of Cincinnati, appeared and addressed the board on the character and value of the property of that company and the just and proper method of assessing the same for taxation by this board, and for consideration in connection with his argument submitted a written abstract of statements made and points urged.

The board made a visit to the Columbus telephone exchange in order to appreciate better the bearing of certain points discussed.

On motion, adjourned until June 27, 1893.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *June* 27, 1893.

The board met pursuant to adjournment. All the members being present.

The minutes of the last three meetings were read and approved.

The auditor of State informed the board, that the ex-
45 press companies, with the exception of the Adams, had not yet made their returns.

The auditor of State was requested to insist on speedy returns from the companies in default, and to require all express companies to return their total gross receipts for the information of the board.

The attorney general informed the board, that he had been advised by counsel representing the Western Union Telegraph Company, and the Adams Express and other express companies, that they intended to enjoin this board from certifying its valuations, when reached, to the counties, on the ground the act creating the board is unconstitutional.

On motion, adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *August* 10, 1893.

The board met pursuant to the call of the president, all the members being present.

The auditor of State informed the board that the express companies had not all made returns, and that, despite his repeated demands, the express companies which had reported, had failed to return their total gross receipts.

On motion the board adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *August* 25, 1893.

The board met pursuant to call of the president, all the members being present.

The minutes of the last two meetings were read and approved.

46 On motion, the board proceeded to ascertain and determine the value of the property of the Western Union Telegraph Company in this State, and no conclusion having been reached, on motion the board adjourned until August 26, 1893.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *August* 26, 1893.

The board met pursuant to adjournment, all the members being present.

The minutes of the last meeting were read and approved.

Consideration of the matter of assessment for taxation of the property of the Western Union Telegraph Company in Ohio *were* resumed.

On motion, the following finding of facts was made unanimously by the board, namely:

That the Western Union Telegraph Company is a corporation under the laws of New York, engaged in the business of transmitting to, from, through and in the State of Ohio, telegraphic messages, and is a telegraph company, subject to appraisement for taxation under the act creating this board.

That on the first day of May, 1893, the amount of the capital stock of said corporation, issued and outstanding, was $94,000,820.00. The par value of its shares was $100.00 each, and the market value of its shares on said day was $87.00 each.

That the value of the entire capital stock of the company on said day was 940,008⅕ shares at $87.00 per share, or $81,780,713.40.

That there should be deducted from the value of the entire capital stock so found ($81,780,713.40), the value of the investments of the company in bonds and stocks of other corporations, being $7,633,230.12, and the value of the real estate owned by it outside of Ohio, being $5,013,326.64, making altogether $13,646,556.76, leaving $69,134,156.64 being the value of the entire capital stock of the company as based upon and represented by the lines of the company.

47 That the whole length in miles of the lines of said company both within and without the State of Ohio, was on the said day 189,576 miles, and the length of such lines in the State of Ohio was 8,272 miles.

That the proportion of the entire value of the capital stock of said company employed in business in Ohio and represented by property taxable therein, was, on said first day of May, 1893, 8,272, 189,576 of $69,134,156.64 which equals $3,016,614.67.

On consideration of the foregoing, the fact that property generally in Ohio is taxed at not more than two-thirds of its actual value, the statement in the return of the company that to reproduce the lines in this State will cost the sum of $1,649,279.10 (which the boards regards as an insufficient estimate, and at any rate, much below the existing value of said lines as an entirety) and other facts and evidence contained in the return of the company and otherwise, brought to the attention of the board, on motion, the board unanimously fix and determine the value of the roperty of the Western Union Telegraph Company in the State of Ohio to be assessed and taxed therein, at the sum of $2,011,076.45.

On motion, the president was directed to employ a clerk to ap-

portion this and succeeding valuations among the several counties and taxing districts for approval and certification by this board.

On motion adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *Oct.* 9, 1893.

The board met pursuant to a call of the president, all members being present.

Hon. William M. Ramsey, counsel, representing the Adams Express Company, the American Express Company, and the Wells-Fargo Company appeared before the board. Also Mr. H. Bimple, sup't, of the Central division of the Adams Express Company on behalf of said company; Mr. R. D. Hughes, general sup't of the Southwestern division of the American Express Company, on behalf of said company, and Thomas M. Dewitt, sup't of the Ohio division of Wells, Fargo and Company on behalf of said company.

48 Messrs. Bimple, Hughes and Dewitt were examined by the members of the board on matters connected with the valuation of the property of the companies represented by them, and their testimony and the requests made through them of their companies by the board, were taken in shorthand by Mr. A. C. Armstrong, reporter.

On motion, the board adjourned.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *Nov.* 20, 1893.

The board met pursuant to a call of the president, all the members being present.

The minutes of the last two meetings were read and approved.

Consideration of the valuation of the property of the express companies was resumed. The president submitted communications, containing facts respecting the value of the property, real and personal, of the Adams Express and the American Express Companies, transmitted to the board by said companies.

On conclusion having been reached, the board adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

Office of the auditor of State of Ohio.

COLUMBUS, OHIO, *Nov.* 23, 1893.

The board met pursuant to a call of the president, all the members being present.

The minutes of the last meeting were read and approved.

Consideration of the appraisement of the property of the express companies was resumed.

The board proceeding to ascertain and determine the value of the property within this State of the Adams Express Company, the American Express Company, the United States Express Company, Wells, Fargo and Company, the National Express Company, and the Pacific Express Company, on motion, it was found unanimously by the board, that the Adams Express Company is a copartnership or joint stock association, that the American Express Company is a copartnership or stock association, that the
49 United States Express Company is a copartnership or joint stock association, that Wells, Fargo and Company is a corporation, that the National Express Company is a corporation, that the Pacific Express Company is a corporation; and that each of the above-named associations and corporations is engaged in the business of conveying to, from and through the State of Ohio, money, packages, gold, silver, plate and other articles by express, not including the ordinary lines of transportation of merchandise and property in the State of Ohio, and should be deemed to be and is an express company, whose property is subject to appraisement for taxation under the act creating this board.

And the board after considering the facts set out in the several returns and supplementary statements, written and oral of the said express companies and their authorized agents, who appeared before the board, the fact that property in Ohio is ordinarily taxed at not more than two-thirds of its actual value, and other facts and evidence duly brought to the knowledge and information of the board, which, in the opinion of the board, throw light upon the character and value of the property of said express companies, and are calculated to aid the board in arriving at the true value in money of the property of said express companies within this State, on motion the board unanimously fix and determine the value of the property of said several express companies in the State of Ohio, to be taxed therein, as follows:

The value of the property of the Adams Express Company in Ohio is fixed at	$460,033 08
The value of the property of the American Express Company in Ohio is fixed at	400,576 45
The value of the property of the United States Express Company in Ohio is fixed at	397,300 00
The value of the property of Wells, Fargo and Company in Ohio is fixed at	133,525 00
The value of the property of the National Express Company in Ohio is fixed at	9,450 00
The value of the property of the Pacific Express Company in Ohio is fixed at	7,550 00

On motion, the board adjourned to meet at the call of the president.

E. W. POE, *President.*

W. T. COPE, *Secretary.*

5—337

I hereby certify that the foregoing is a correct copy of the minutes of the meetings named, of the State board of assessors and appraisers of telegraph, telephone and express companies.

E. W. POE,
President of the Board.

Columbus, Ohio, Dec. 20, 1893.

And afterwards, to wit, on the 26th day of February, A. D. 1894, the following affidavit was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of E. W. Poe.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE ADAMS EXPRESS COMPANY
vs.
E. W. POE, Auditor, etc.

STATE OF OHIO,
Franklin County, } *ss:*

Ebenezer W. Poe, being first duly sworn, says that he is the duly elected, qualified and acting auditor of State of Ohio; that as such auditor he is a member of the board created by the laws of Ohio, passed April 27, 1893, and entitled, "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Rev. Statutes of Ohio," being the act for the taxation of express, telegraph and telephone companies. That in accordance with the provisions of said act, the treasurer of State and attorney general of the State of Ohio, along with this affiant, constitute the board of appraisers and assessors for express, telegraph and telephone companies in Ohio, duly organized as such board, and held their meetings in the office of the auditor of State. That this affiant, as auditor of State was elected president of said board, and now is president of the same. That, pursuant to instructions of the board, blank forms for returns for taxation were furnished by affiant as auditor of State to the Adams Express Company, the American Express Company, the United States Express Company and the National Express Company. That each of said companies filed with this affiant as auditor of State their reports with accompanying statements duly verified. That said reports and statements were laid before this board of appraisers and assessors. That said companies were each advised of the meetings of said board, and that said board would receive any statement or accord them any hearing they desired. That said express companies did have a hearing before said board as appears by the minutes of said board. That subsequent to said hearing the board received from said Adams Express Company and said American Express Company

supplementary statements giving the value of the real estate and personal property of said companies. That each and all of said express companies, although requested by said board to furnish said board with a statement of the entire gross receipts of said companies both within and without the State of Ohio, refused to do so.

In the return of the Adams Express Company, the number of shares of capital stock was given as 120,000 and the market value from $140.00 to $150.00 per share, making the actual value of 120,000 shares at $140.00 a share, $16,300,000.00.

In the return of the American Express Company the number of shares of capital stock *were* given at 180,000, the market value at $115.00 per share, making the actual value of 180,000 shares at $115.00 per share, $20,700,000.00.

In the return of the United Express Company, the number of shares of capital stock was given as 100,000, the market value $45.00 per share, making the actual value of 100,000 shares of stock at $45.00 per share, $4,500,000.00.

There was no return of the capital stock of the National Express Company.

In the return of the Adams Express Company, the total value of the personal property in Ohio, was stated to be $53,080.74, and the gross receipts of the business done by the company within the State of Ohio for the year ending the first day of May, 1893, was stated to be $175,034.00.

In the return of the American Express Company, the value of the personal property of the company within Ohio was stated to be $27,300.00, and the gross receipts of the company of business done in Ohio for the year ending May 1, 1893, was stated to be $312,409.95.

52 In the return of the United States Express Company, the value of the personal property in Ohio was given as $26,318.00 and the gross receipts of business done within Ohio for the year ending May 1, 1893, $352,900.00.

In the return of the National Express Company, the value of the personal property used by it in Ohio, was stated to be $5,388.04 and the gross receipts of business done within Ohio for the year ending May 1, 1893, $4,600.04.

In the testimony of the agents of the Adams, the American, and Wells, Fargo and Company Express Companies, information was given the board as to the character in detail of the property of these companies in the State of Ohio, and the character of the business done.

In the supplementary statements, in the form of letters and not under oath, of the Adams and American Express Company, the total value of the real estate of the Adams Express Company was said to be $3,050,272.47, and the value of the total personal property of the company, $1,034,481.43; and the value of the total real estate of the American Express Company was said to be $4,956,585.63, and the value of the total personal property of the company was said to be $1,742,402.04.

No statement was made to the board as to the value of the total

real estate and total personal property of either the United States Express Company or the National Express Company.

In the schedules attached to and made a part of the statements of these various express companies, the value of the personal property at each office in the State at which the company did business for the year ending May 1, 1893, and the gross receipts from business done within the State at each office during such year was given.

In the statement of the Adams Express Company were included reports from 363 offices. From two of these offices the personal property was returned at the value of less than $1.00; from 72 offices the personal property in each instance was retured at a value of over $1.00; from 51 offices the personal property was returned at a value of over $1.00 and under $2.00. Thus from 125 offices of the Adams Express Company the personal property was returned as less than $2.00.

In the statement of the American Express Company, there
53–59 were reports from 302 offices, and but from 46 of these offices was there any return of personal property.

In the statement of the United States Express Company there were reports from 417 offices and from only 95 of these offices were there any returns of personal property.

Neither of the express companies made any return of safes, pouches or other personal property or the value thereof, used on the railroad lines in this State in the transaction of its business.

In arriving at the value of the property of these express companies taxable in Ohio, the board did not follow any fixed rule, except the rule that property in Ohio is ordinarily taxed at not more than two-thirds of its actual value, and the law governing this board. The board considered the facts already stated, set out in the returns and supplementary statements, and also other facts in said returns and in the testimony of the authorized agents of the companies who appeared before the board. For purposes of comparison, the board examined the gross receipts returned by these companies in preceding years. Taking all the information the board had or could secure, the value of the capital stock of the company, its gross receipts within Ohio, the return of personal property made and the character thereof and evidence, undervaluations and omissions therein, the number of offices, the amount of business done, the nature and value of the property and capital required to carry on such business and other evidence and information, the board in each instance, ascertained what it considered the fair proportion of the property of the company employed by it in Ohio, and fixed the value of the property of such company situate and taxable therein, being guided, in determining the value of the property by the value of the entire capital stock, and other evidence and information before the board.

E. W. POE.

Signed and sworn to before me this 26th day of February, 1894.

C. O. L. COOPER,

[SEAL.] *Notary Public, Franklin County, Ohio.*

And afterwards, to wit: on the 14th day of March, A. D. 1894, the following conclusion of Judge Wm. H. Taft was filed in the clerk's office of said court clothed in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel. See side page 135.)

* * * * * * *

60 And afterwards, to wit, on the 31st day of March, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal B, p. 553.

Leave to File Supplemental Bill, &c.

This day came the complainant, and by leave of court first had, made certain amendments to its complaint by interlineation and marginal writing upon the face of the bill; and the complainant moved the court at the same time for leave to file its certain supplemental bill of complaint, which motion was granted and said supplemental bill thereupon filed.

And it is now ordered by the court that the restraining order heretofore issued herein continue in force until the further order of this court.

61–68 And afterwards, to wit, on the 31st day of March, A. D. 1894, the following supplemental bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Supplemental Bill.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE ADAMS EXPRESS COMPANY *vs.* E. W. POE *et al.* } No. 673. Supplemental Bill of Complaint.

Now comes your orator and humbly shows to the court that pursuant to the order of the court, entered subsequently to the filing of the original bill herein, it has tendered in lawful money of the United States to each county treasurer in the State of Ohio, wherein it owns property and transacts business, the full amount of all past-due taxes upon its real and personal property and income, computed according to the current rate of taxation in the several counties, upon the method of valuation provided for by the statutes of the State of Ohio, in force up to and at the time of the adoption of the acts complained of in the original bill herein, together with the legal penalty of five per cent. and interest at the rate of six per cent. from the dates when said taxes severally become due.

Wherefore your orator humbly prays as in its original bill.

RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

And afterwards, to wit, on the 23rd day of April, A. D. 1894, the following opinion of Judge Taft was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel. See side page 135.)

* * * * * * *

69 And afterwards, to wit, on the 2nd day of May, A. D. 1894, the following affidavit was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of L. C. Weir.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE ADAMS EXPRESS COMPANY *vs.* E. W. POE *et al.* } No. 673. Affidavit.

STATE OF OHIO, *Hamilton County,* } *ss:*

L. C. Weir, being first duly sworn, states that he is manager of the complainant company; that pursuant to the order of this court said company did, prior to the date of the filing of the supplemental bill of complaint herein to wit: prior to March 31, 1894, tendered in lawful money of the United States to the treasurer of each county in the State of Ohio in which said company owns property, or does business, the full amount of all unpaid and past-due taxes upon its personal and real property and upon all of its gross receipts within the State of Ohio, under the provisions in section 2778, of the Revised Statutes of Ohio, the amount tendered being computed at the current rate of taxation for each county under the law as it existed at the time of the passage of the act known as the Nichols law, passed April 24, 1893, together with penalty of five per cent. upon the total amount of said taxes and six per cent. interest from the date when they severally become due. And further affiant saith not.

L. C. WEIR.

Sworn to before me and subscribed in my presence this 2nd day of May, 1894.

[SEAL.] MORRISON R. WAITE,
Notary Public, Hamilton County, Ohio.

And afterwards, to wit, on the 2nd day of March, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal B, page 557.

70 *Entry Allowing Amendment to Supplemental Bill.*

Upon application of the complainant leave is hereby granted it to file an amendment to its supplemental bill, by inserting after the words: "the full amount of all past-due taxes, upon its real and personal property and income," in said supplemental bill—the following words, to wit, "including all of its gross receipts upon business within the State of Ohio."

And afterwards, to wit, on the 2nd day of May, A. D. 1894, the following amendment to supplemental bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amendment to Supplemental Bill.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS COMPANY
vs.
E. W. POE, Auditor, *et al.*
} Amendment to Supplemental Bill.

Now comes your orator and by leave of court first had, hereby amends its supplemental bill by inserting after the words: "the full amount of all past-due taxes upon its real and personal property and income," the following words, to wit: "including all of its gross receipts upon the business within the State of Ohio."

Wherefore your orator humbly prays as in its original bill.

RAMSEY, MAXWELL & RAMSEY,
Solicitors for Complainant.

And afterwards, to wit, on the 3rd day of May, A. D. 1894, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry—Journal B, p. 557.

Entry Overruling Demurrer.

71 This cause coming on to be heard upon the demurrer to the complaint and supplemental complaint herein filed, was submitted to the court upon the argument of counsel; and upon consideration thereof the court finds that said demurrer is not well taken and does overrule the same, to all of which the respondents except.

And afterwards, to wit, on the 7th day of September, A. D. 1894, the following order was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Order.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS COMPANY
vs.
E. W. POE *et al.* } Order.

To the clerk:

The defendants being in default for plea or answer you will please enter an order in accordance with equity rule 18, that the bill be taken *pro confesso*.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Plaintiff.

And afterwards, to wit, on the 7th day of September, A. D. 1894, an order was made upon the order book of said court, clothed in the words and figures following, to wit:

Order Book A, p. 130.

Decree pro Confesso.

It appearing that the defendants herein have been duly served with process of subpœna and having failed to plead or answer to the bill of complaint, and are in default therefor, a decree *pro confesso* is hereby taken against the said defendants, and the allegations of the bill of complaint are taken as confessed and true.

And afterwards, to wit, on the 17th day of September, A. D. 1894, the following motion was filed in the clerk's office of said court clothed in the words and figures following, to wit:

72 *Motion.*

Circuit Court of the United States.

THE ADAMS EXPRESS COMPANY, Complainant,
vs.
E. W. POE *et al.*, Defendants. } No. 673.

Now come the defendants and move the court to set aside the decree *pro confesso* taken by complainant on the 7th day of September, 1894, and for leave to further plead in said cause and file herewith their affidavit according to the rules of this court.

J. K. RICHARDS,
Attorney General,
By THOS. McDOUGALL,
Attorney for Defendants.

And afterwards, to wit, on the 17th day of September, A. D. 1894, the following affidavit of E. W. Poe was filed by the defendants in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of E. W. Poe.

Circuit Court of the United States.

THE ADAMS EXPRESS COMPANY
vs.
E. W. POE *et al.*
} No. 673. Affidavit.

E. W. Poe, being duly sworn, says that he is one of the defendants in the above cause. That on or about the 23rd day of April, 1894, this court filed its opinion overruling the motion and demurrer of defendants in this cause, which motion and demurrer were filed for the purpose of raising the question of the constitutionality of the law of Ohio whose validity was assailed by the complainant in said cause.

73 At the time the opinion of this court was filed a case was pending in the supreme court of Ohio involving the constitutionality of said act, and his honor, Judge Taft, at the time he filed the opinion on the 23rd of April, 1894, holding the act to be unconstitutional because it was in contravention of the constitution of Ohio, informed counsel for defendants that in the event *of* the supreme court of Ohio should render a decision on the validity of said act, the defendants might apply to this court for such modification of the restraining order as they believed they would be entitled to under said opinion.

Affiant further says that some time in the latter part of June, 1894, the supreme court of Ohio announced its decision upholding the constitutionality of the act, but that the court's opinion was not published until some time in the latter part of July, 1894, and was not known by or available to those defendants or their counsel until that time. This court adjourned some time prior to the publication of the opinion of the supreme court of Ohio and has not been in session since that time.

Affiant further says that since the adjournment of this court defendants have received the opinion of the Supreme Court of the United States in the Indiana tax cases, 154 U. S., pages 421 to 447 inclusive.

Affiant further states that in view of the decision of the Supreme Court of the United States and of the State of Ohio aforesaid, defendants desire a rehearing of the questions raised under the motion and demurrer heretofore argued, and desire to move the court to dissolve the preliminary restraining order heretofore granted and are prepared to present their argument on said motion and rehearing at such time as this court will designate.

Defendants are ready to file such pleadings as they deem necessary in said cause, and further state that in the event this court on rehearing shall regard said bill as sufficient and continue said restraining order, they have a good and sufficient defense to the merits of said bill, and will be prepared to file their answer thereto within such time as this court shall order.

And further affiant saith not.

E. W. POE.

Sworn to before me and subscribed in my presence this 15th day of September, 1894.

C. O. L. COOPER,
[SEAL.] *Notary Public.*

74 And afterwards, to wit, on the 27th day of September, A. D. 1894, the following affidavit was filed by the plaintiff in the clerk's office of said court, clothed in the words and figures following, to wit:

Affidavit of George D. Hartman.

STATE OF OHIO, *Lucas County,* } ss:

George D. Hartman, being duly sworn, says that he is, and at the times hereinafter mentioned was, the agent of the National Express Company in Lucas county, Ohio, that on March 16, 1894, he paid to the treasurer of Lucas county, for and on account of the taxes due in said county from said company for the year 1893, the sum of twenty-three dollars and forty-four cents ($23.44) that being more than the amount of all taxes which would be due from said company in said county for the year 1893 under the law as it existed at the time of the passage of the so-called Nichols act of April 27, 1893 (90 O. L., 330, 331), and that said taxes were received by the said treasurer and receipts given therefor, which are hereto attached and have been and still are retained by him, and are more than the amount which would be due from said company for taxes in said county for said year under said so-called Nichols act.

That the total valuation of said company's assets assessed by the State board of appraisers and apportioned by said board to Lucas county for the year 1893, was seven hundred and fifty-six dollars ($756.00); that the rate of taxation for Lucas county for said year, including all taxes, State, county, township and municipal was—

Providence township	2.32 per cent.
Waterville village	2.10 per cent.
Maumee district	3.06 per cent.
Toledo	2.86 per cent.

that the total amount of taxes upon said valuation under said so-called Nichols act for the year 1893, to wit, the taxes due and payable on December 20, 1893, and June 20, 1894, would be twenty-one dollars and thirty-six cents ($21.36), or adding penalty up to March 16, 1894, twenty-two dollars and forty-three cents ($22.43).

Affiant further says that notwithstanding said payment of March 16, 1894, subsequently on March 30, 1894, he tendered to
75 the treasurer of said county the said sum of twenty-two and $\frac{43}{100}$ dollars ($22.43) as and for the full amount of taxes due from said company, together with penalty under said Nichols act, for the year 1893, which tender was refused.

GEO. D. HARTMAN.

Sworn before me and subscribed in my presence this 25th day of Sept., 1894.

[SEAL.] A. P. CRANE,
Notary Public, Lucas County, Ohio.

D. L. 13831.

Received

From National Express Co.
One & 99-.... dollars.
Personal taxes charged on the
County duplicate as follows, viz:

Lucas county
Tax receipt,
Toledo, Ohio.
Mar. 16, 1894.

Vol.	Page.	Line.	Ward.	Corporation tp.	Year.	Rate.	Value.	Tax.	5% pen'y.	Total.
15	29	5		Providence	1893	2 32	10	23	1 99	
C	57	35		Waterville vil.	"	2 10	30	63		
		36		"	"	2 10	10	21		
	137	10		Maumee	"	3 06	20	61		
		11		"	"	3 06	10	31		1 99
							80			

M.

Copied S. W. HUNTER, *Treasurer.*
June C, page 4418.
By M. Gen.

Approved,
J. W. H., *Gen. Sup't.*

Charge
Western Division.
Taxes.

76 D. L. 13831.

Received

From National Express Co.
Twenty-one & 45-.... dollars
Personal taxes charged on the
County duplicate as follows, viz:

Lucas County
Tax receipt,
Toledo, Ohio.
Mar. 16, 1894.

Vol.	Page.	Line.	Ward.	Corporation tp.	Year.	Rate.	Value.	Tax.	5% pen'y.	Total.
P.	258	37		Toledo	1893	2 86	6 90	19 73		
		38		"	"		60	1 72	21 45	
										21 45

M.

Copied S. W. HUNTER, *Treasurer.*
June C, page 4418.
By M. Gen.

Approved,
J. W. H., *Gen. Sup't.*

Charge
Western Division.
Taxes.

And afterwards, to wit, on the 17th day of September, A. D. 1894, the following answer was filed in the clerk's office of said court clothed in the words and figures following, to wit:

Answer to Motion.

Circuit Court of the United States, Southern District of Ohio, Eastern Division.

THE ADAMS EXPRESS COMPANY, Plaintiff, *vs.* E. W. POE *et al.*, Defendants. } Answer to the motion to Set Aside the Decree *Pro Confesso.*

77 The plaintiff submits the following statement with respect to the proceedings in the supreme court of Ohio, referred to in the affidavit in support of the defendants' motion to set aside the decree *pro confesso.*

On November 22nd and November 23rd, 1893, this plaintiff, The American Express Company, The United States Express Company and The Western Union Telegraph Company filed their separate bills in this court against the defendants, all of them being substantially similar to the bill herein, to enjoin the defendants from making assessments against the plaintiffs respectively under said act of April 27, 1893, for the year 1893, upon the ground that said act was in contravention of the constitution of the State of Ohio, and of the United States.

Upon the filing of said bills restraining orders were issued in each of said cases, restraining the defendants in accordance with the prayer of the respective bills, from certifying the appraisements and assessments made by them under said act to the auditors of any of the counties of the State. The defendants filed motions in each of said cases to dissolve said restraining orders, and also demurrers to said bills, which motions and demurrers were argued before the circuit judge in the latter part of December, 1893; and by order of the court reargued on March 23, 1894. On March 14th, 1894, the circuit judge, in ordering said reargument, filed a provisional opinion which led the defendants to apprehend that his decision upon the motions and demurrers would be adverse to them. Thereupon for the purpose of anticipating the judgments of this court upon the questions involved in said cases, the defendants commenced said suit in mandamus upon their own relation in the supreme court of the State of Ohio against Charles H. Jones, auditor of Lucas county, Ohio, to compel him to place upon the tax duplicate for the year 1893, the sum of $754.00 against the National Express Company, in order that the sum might be assessed under said act of April 27, 1893, and the taxes thereon collected.

The petition in said suit was filed on March 19, 1894. The taxes for the year 1893, assessable in Lucas county, Ohio, against said National Express Company on account of said valuation of $754.00 would amount to the sum of $21.36. On March 16th, 1894, three days before the commencement of said suit in mandamus, said Na-

tional Express Company had paid to the treasurer of Lucas county, on account of its taxes for the year 1893, $23.94, or more than was claimed to be due from it, including penalties under said mandamus suit; in other words all of the taxes due from said National
78 Express Company in Lucas county in any view of the law had been fully paid prior to the commencement of said mandamus suit, as the defendants well knew, and there was no real controversy or subject-matter of controversy upon which to base said suit, and the same was gotten up by the defendants for the sole purpose of anticipating the decision of this court, and of any Federal court to which this case and the other cases hereinbefore referred to, then pending herein, might be taken on appeal, and of controlling the decision of the Federal courts upon the questions involved.

The petition in said suit in mandamus stated that the auditor of said county refused to make entry on the tax duplicate of the amount due from said National Express Company; but your orator will show to the court that such refusal, if in fact made, was at the instance and request of the defendants herein, and for the sole purpose of raising a plausible pretense for their said moot case.

Your orator will further show that the counsel who appeared for the defendants in said moot case was selected by the defendants herein, and that he substantially adopted the answer prepared by them.

On April 23rd, 1894, this court filed its opinion holding said act of April 27, 1893, to be in contravention of the constitution of Ohio, without passing upon or reaching the question of validity under the Constitution of the United States.

Subsequently on or about June 17, 1894, the supreme court of Ohio filed an opinion in said mandamus case holding that said act was a valid law, but without noticing or passing upon the real or substantial objections to its validity, which indeed were not presented by the record, or by proper allegations of the facts.

Wherefore your orator respectfully submits that the said proceedings in the supreme court of Ohio afford no reason why the decree *pro confesso* should be set aside for the purpose of permitting the defendants to reargue the demurrers herein, or the motion to dissolve the preliminary injunction, or otherwise, the questions involved in the decision of this court heretofore rendered; nor should the rights and interests of this plaintiff or of the other plaintiffs in said similar suits, be affected or controlled in this court by said proceedings.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Plaintiff.

Verification waived.
THOS. McDOUGALL,
Of Counsel for Defendants.

79 And afterwards, to wit, on the 17th day of September, A. D. 1894, the following transcript was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Transcript from Supreme Court of Ohio.

THE STATE OF OHIO on the Relation of Ebenezer W. Poe, Auditor of State; John K. Richards, Attorney General, and William T. Cope, Treasurer of State, of Ohio, Plaintiff, *vs.* CHARLES H. JONES, Auditor of Lucas County, Ohio, Defendant.	In the Supreme Court of Ohio, Mandamus. No. 3951.

To the honorable the supreme court of Ohio:

Your petitioner- represent, that they have been since prior to the 27th day of April, 1893, and now are, respect*fully* the auditor of state, attorney general and treasurer of state of the State of Ohio, and as such constitute the board of appraisers and assessors for express, telegraph and telephone companies, in the State of Ohio, under the act entitled "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Revised Statutes of Ohio," passed by the General Assembly of Ohio, April 27, 1893, and have been and are charged as such board, with the performance of certain duties defined in said act.

Your petitioners say, that acting under and by virtue of the authority conferred upon them by the act mentioned, they did, as such board, prior to the 22nd day of November, 1893, duly and in accordance with the provisions of the act mentioned, fix and determine the value of the property of the National Express Company, an express company as defined in said act, in Ohio, for the year 1893, to be taxed therein at the sum of $9,450.00. And, further, that acting as such board and in accordance with the provisions of the act mentioned, the petitioners duly apportioned the valuation of the property of the said company among the several counties of Ohio, in which the said express company named did business on the first day of May, 1893, apportioning to Lucas county,
80 Ohio, of the total valuation of the property of the National Express Company in Ohio, the sum of $754.00.

Your petitioners as such board of appraisers and assessors were, on or about the 22nd day of November, 1893, restrained by an order of the circuit court of the United States for the southern district of Ohio, made in a suit instituted therein against them by said express company, from certifying the said assessments and valuations to the auditors of the various counties, including the auditor of Lucas county; but on the 19th day of March, 1894, the temporary injunction granted in the suit referred to, was dissolved and thereupon, on the 19th day of March, 1894, your petitioners acting as such board, duly certified to the defendant Charles H. Jones, as auditor of Lucas county, Ohio, the foregoing amount, apportioned to his county, of the total valuation of the property of the said express company in Ohio. The defendant received the certificate aforesaid and, thereupon, it became, was and is his duty as auditor of Lucas

county, to apportion the amount referred to among the cities, villages, townships and districts or parts thereof, in Lucas county, and to put the same on the tax-list of Lucas county to be assessed and taxes thereon collected, the same as taxes assessed and collected on other personal property; and the rate of taxation to be the same on said apportioned valuation thus certified, as that assessed against real and personal property in said cities, villages, townships and districts of Lucas county.

But the defendant claiming that he is advised by counsel learned in the law, that the act of April 27, 1893, creating the State board of appraisers and assessors of the property of express, telegraph and telephone companies, under which your petitioners as such board have acted in assessing the property of the companies named in Ohio and apportioning the valuations fixed among the various counties, including Lucas county, and certifying to it, Lucas county, its proportion of the valuations as aforesaid, was and is unconstitutional and void, being in violation of the provisions of the Constitution of the United States and the constitution of the State of Ohio, has refused and does refuse to apportion the valuation certified to him by this board among the several cities, villages, townships and districts of Lucas county, and has refused and does refuse to place the same on the tax-list to be assessed and taxes thereon collected the same as taxes assessed and collected on other personal property; and has refused and does refuse to perform any duty imposed on him by the said act.

81 Wherefore, your petitioners pray that a writ of mandamus may issue against the said defendant, Charles H. Jones, auditor of Lucas county, Ohio, commanding him forthwith to apportion the amounts assessed against the said express company and certified to him as aforesaid, to the cities, villages, townships and districts or parts thereof, in Lucas county, and to place the same on the tax-list to be assessed and taxes thereon collected, the same as taxes assessed and collected on other personal property; and to do all other things enjoined upon him by the act mentioned or by the law of Ohio with respect to the levying and collection of taxes on the valuations of the company named, apportioned and certified to him.

J. K. RICHARDS,
Attorney General.

Issue alternative writ returnable March 29, 1894.

F. J. DICKMAN,
Chief Justice.

March 19, 1894.

STATE OF OHIO, } *ss:*
Franklin County, }

Ebenezer W. Poe, being duly sworn, says, that he is one of the plaintiffs herein, and the president of the board of appraisers and

assessors for express, telegraph and telephone companies in Ohio, and that the facts set out in the foregoing petition are true.

E. W. POE.

Sworn to before me and subscribed in my presence this 19th day of March, A. D. 1894.

C. O. L. COOPER,
[SEAL.] *Notary Public, Franklin County, Ohio.*

The appearance of the defendant is hereby entered and consent given that an alternative writ may issue, returnable on the 29th day of March, 1894.

In the Supreme Court of Ohio.

STATE OF OHIO, *Franklin County,* } *ss:*

To Charles H. Jones, auditor of Lucas county, Ohio:

We hereby command you, that forthwith upon the receipt of this writ, you apportion the amount of $754.00 assessed against the National Express Company, being the proportion for Lucas
82 county, of the total valuation of the property of said express company in Ohio, for the year 1893, to be taxed therein, as assessed and apportioned by the board of appraisers and assessors for express, telegraph and telephone companies, under the act entitled "An act to amend and supplement sections 2777, 2778, 2779, and 2780 of the Revised Statutes of Ohio," passed April 27, 1893, and certified by said board to you among the different cities, villages, townships and districts or parts thereof, in Lucas county, and that you place such amount on the tax-list of Lucas county against the said express company to be assessed and taxes thereon collected the same as taxes assessed and collected on other personal property; and that you do all other things enjoined on you by the act mentioned or by the law of Ohio, with respect to the levying and collecting of taxes on the valuation of the property of the company named, apportioned and certified to you by said board; as we are asked in a petition to command you to do, a copy of which petition is hereto attached marked "Exhibit A," or else that you appear in this court at nine o'clock a. m., on the 29th day of March, 1894, and show cause why you have not done or should not do so.

Witness my hand and seal of the supreme court of Ohio, this 19th day of March, 1894.

[SEAL.] JOSIAH B. ALLEN, *Clerk,*
By GEO. H. KOLKER, *Deputy.*

EXHIBIT "A."

THE STATE OF OHIO on the Relation of Ebenezer W. Poe, Auditor of State; John K. Richards, Attorney General, and William T. Cope, Treasurer of State, of the State of Ohio, Plaintiff,
vs.
CHARLES H. JONES, Auditor of Lucas Co., O., Defendant.

In the Supreme Court of Ohio. Mandamus. No. 3951.

To the honorable the supreme court of Ohio:

Your petitioners represent that they have been since prior to the 27th day of April, 1893, and now are respectively the auditor
83 of state, attorney general and treasurer of state of the State of Ohio, and as such constitute the board of appraisers and assessors for express, telegraph and telephone companies in the State of Ohio, under the act entitled "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Rev. Stat. of Ohio," passed by the General Assembly of Ohio, April 27, 1893, and have been and are charged as such board with the performance of certain duties defined in said act.

Your petitioners say, that acting under and by virtue of the authority conferred upon them by the act mentioned they did as such board prior to the 22nd day of November, 1893, duly and in accordance with the provisions of the act mentioned fix and determine the value of the property of the Nationol Express Company, an express company as defined in said act in Ohio, for the year 1893, to be taxed therein at the sum of $9,450.00. And further that, acting as such board, and in accordance with the provisions of the act mentioned, the petitioners duly apportioned the valuation of the property of the said company among the several counties of Ohio in which the said express company named did business, on the first day of May, 1893, apportioning to Lucas county, Ohio, of the total valuation of the property of the National Express Company in Ohio, the sum of $754.00.

Your petitioners as such board of appraisers and assessors, were, on or about the 22nd day of November, 1893, restrained by an order of the circuit court of the United States for the southern district of Ohio, made in a suit instituted therein against them by said express company, from certifying the said assessments and valuations to the auditors of the various counties, including the auditor of Lucas county; but on the 19th day of March, 1894, the temporary injunctiou granted in the suit referred to, was dissolved and thereupon, on the 19th day of March, 1894, your petitioners, acting as such board, duly certified to the defendant, Charles H. Jones, as auditor of Lucas county, Ohio, the foregoing amount, apportioned to his county, of the total valuation of the property of the said express company in Ohio. The defendant received the certificate aforesaid, and thereupon it became, was, and is his duty as auditor of Lucas

county to apportion the amount referred to among the cities, villages, townships and districts, or parts thereof, in Lucas county, and to put the same on the tax-list of Lucas county to be assessed and collected on other personal property; and the rate of taxation to be the same on said apportioned valuation thus certified
84 as that assessed against real and personal property in said cities, villages, townships and districts of Lucas county.

But the defendant, claiming that he is advised by counsel learned in the law, that the act of April 27, 1893, creating the State board of appraisers and assessors of the property of express, telegraph and telephone companies, under which your petitioners as such board have acted in assessing the property of the companies named in Ohio, and apportioning the valuations fixed among the various counties, including Lucas county, and certifying to it, Lucas county, its proportion of the valuation as aforesaid, was and is unconstitutional and void, being in violation of the provisions of the Constitution of the United States and the constitution of the State of Ohio, has refused and does refuse to apportion the valuation certified to him by this board among the several cities, villages, townships and districts of Lucas county, and has refused and does refuse to place the same on the tax-list to be assessed and taxes thereon collected the same as taxes assessed and collected on other personal property; and has refused and does refuse to perform any duty imposed on him by the said act.

Wherefore your petitioners pray that a writ of mandamus may issue against the said defendant, Charles H. Jones, auditor of Lucas county, Ohio, commanding him forthwith to apportion the amounts assessed against the said express company and certified to him as aforesaid, to the cities, villages, townships and districts, or parts thereof, in Lucas county, and to place the same on the tax-list to be assessed and taxes thereon collected the same as taxes assessed and collected on other personal property; and to do all other things enjoined upon him by the act mentioned or by the law of Ohio, with respect to the levying and collection of taxes on the valuations of the company named, apportioned and certified to him.

J. K. RICHARDS,
Attorney General.

Issue alternative writ returnable March 29, 1894.
March 19, 1894.

F. J. DICKMAN,
Chief Justice.

STATE OF OHIO, }
Franklin County, } *ss:*

Ebenezer W. Poe, being duly sworn, says that he is one of the plaintiffs herein, and the president of the board of appraisers
85 and assessors for express, telegraph and telephone companies in Ohio, and that the facts set out in the foregoing petition are true.

E. W. POE.

Sworn to before me and subscribed in my presence this 19th day of March, A. D. 1894.

[SEAL.] C. O. L. COOPER,
Notary Public, Franklin County, Ohio.

Service of the foregoing alternative writ is hereby acknowledged and the appearance of the defendant entered this 20th day of March, 1894.

CHAS. H. JONES,
Auditor of Lucas County, Ohio.

In the Supreme Court of Ohio.

THE STATE OF OHIO on the Relation of Ebenezer W. Poe, Auditor of State; John K. Richards, Attorney General, and William T. Cope, Treasurer of State, of the State of Ohio, Plaintiffs,
vs.
CHARLES H. JONES, Auditor of Lucas County, Ohio, Defendant.
No. 3951. Answer.

The defendant, Charles H. Jones, admits that he is the duly elected, qualified and acting auditor of Lucas county, Ohio, that the petitioners constitute the board of appraisers and assessors, for express, telegraph and telephone companies, in the State of Ohio, under the act of April 27, 1893, described in the petition; and that acting as such board the petitioners, as averred therein, assessed and appraised the property of the National Express Company in Ohio, which company is a foreign corporation, and apportioned such valuation among the several counties in which said company did business on the first day of May, 1893, including Lucas county, and certified the apportioned valuation to the several auditors of such counties including this defendant.

The defendant admits that he has received a certified certificate from said board of the part of the valuation of the property
86 of the said express company, apportioned to Lucas county, and that he has refused to apportion the valuation thus certified to him, among the taxing districts of Lucas county, and has refused to place such amount on the tax duplicate of Lucas county, and has refused and does refuse to perform any duties imposed upon him by the act of April 27, 1893, described in the petition.

The reason of the defendant for declining to take any steps under the act mentioned, is, that it is the opinion of counsel learned in the law, and he avers and submits to the court, that the said act entitled, "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Revised Statutes of Ohio," passed by the General Assembly of Ohio, April 27, 1893, is unconstitutional and void, being in violation of certain provisions of the Constitution of the United States and the constitution of the State of Ohio.

Defendant submits to the court, that the said act provides for a

method of appraisement and valuation which violates the provisions of the Constitution of the United States and the constitution of Ohio, in the following among other respects:

The property of express, telephone and telegraph companies is not, under this act, taxed by a uniform rule. It is of the same character as the property of individuals, but is valued by a special board after the peculiar method which is in violation of section 2, of article 12, of the constitution of Ohio.

The property of these companies is not assessed at its true value in money, because the value of the capital stock is taken as a guide, thereby adding to the intrinsic value of the tangible property in this State, a value, inherent in the capital stock and due to the franchises conferred by other States and the United States, the good will and the business of the company and the value of its property in other States, in contravention of section 2, of article 12. The equal protection of the law is denied, because the property is classified and the method of valuation distinct from that used for property of individuals, adopted in contravention of the fourteenth amendment of the Constitution of the United States.

The property of these companies is taken without due process of law, in violation of the fourteenth amendment of the Constitution of the United States, because there is no provision in the act for a notice to the companies and for a hearing by the board of appraisers and assessors and there is no appeal provided to any
87 superior authority for the correction of illegal, erroneous or excessive valuations.

This law, in that it attempts to tax the franchise of these corporations by taking the capital stock as a guide in valuing the tangible property thus adding to the value of the tangible property a fictitious value inherent in the capital stock and due to the franchise and business of the companies, provides, in effect for an excise tax; and under the constitution of Ohio, no excise tax may be levied the State being limited by article 12, section 2, to the taxation of property in raising general revenue.

The act violates that clause of the Constitution of the United States giving Congress the power to regulate commerce among the various States, because express and telegraph companies are companies engaged in interstate commerce and the tax provided is a discriminating tax upon the business of such companies, amounting to an interference with and burden upon interstate commerce.

For these and other reasons, the defendant submits to the court that the act of April 27, 1893, is unconstitutional and void, and he asks that this suit may be dismissed.

DAVID K. WATSON,
Attorney for Defendant.

THE STATE OF OHIO, }
Franklin County, } *ss:*

Charles H. Jones, being sworn, says he is the auditor of Lucas county, and the defendant in the foregoing proceeding, and that the facts stated in his above answer are true as he verily believes.

CHARLES H. JONES.

Signed and sworn to before me this 30th day of March, 1894.

JOSIAH B. ALLEN,
Clerk Supreme Court of Ohio,
By GEO. H. KOLKER, *Deputy.*

[SEAL.]

88 THE STATE OF OHIO, on the Relation of Ebenezer W. Poe, Auditor of State, *et al.*
vs.
CHARLES H. JONES, Auditor of Lucas County.

Supreme Court of Ohio. No. 3951. In Mandamus.

Demurrer.

The plaintiff demurs to the answer of the defendant to the petition and alternative writ, for the reason that the same does not state facts sufficient to constitute a defense.

J. K. RICHARDS,
Attorney General.
THOS. McDOUGALL, *Of Counsel.*

SUPREME COURT OF OHIO, CLERK'S OFFICE.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing petition, alternative writ and return, answer and demurrer, in the case of The State of Ohio on the relation of Ebenezer W. Poe, auditor of State; John K. Richards, attorney general, and William T. Cope, treasurer of state of the State of Ohio against Charles H. Jones, auditor of Lucas county, Ohio, No. 3951, are true and correct copies of all the original pleadings filed in said cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this fourth day of October, A. D. 1894.

[SEAL.]

JOSIAH B. ALLEN, *Clerk.*

89 Cover endorsed as follows:

Supreme court of Ohio. Ohio *ex rel.* attorney general, &c., *et al.*, *vs.* Charles H. Jones, auditor. No. 3951. Transcript of pleadings.

Docket and Journal Entries.

Supreme Court of Ohio, January Term, 1894.

THE STATE OF OHIO on the Relation of Ebenezer W. Poe, Auditor of State; John K. Richard, Attorney General, and William T. Cope, Treasurer of State of the State of Ohio, *vs.* CHARLES H. JONES, Auditor of Lucas County, Ohio.	No. 3951. Mandamus.

Costs.

Filing petition	$5 00
Filing record	4 25

March 19, 1894. Petition filed. Alternative writ allowed.

"Now came the relators and made application for the allowance of a writ of mandamus herein; and on consideration thereof, the court allow an alternative writ to issue against the said Charles H. Jones, auditor of Lucas county, returnable to this court on the 29th day of March, A. D. 1894, at nine o'clock a. m. And it is ordered that the said Charles H. Jones, auditor of Lucas county, do, immediately upon the service of this writ apportion the amount of $754 00 assessed against the National Express Company, being the proportion for Lucas county of the total valuation of the property of said express company in Ohio for the year 1893, to be 90 taxed therein, as assessed and apportioned by the board of appraisers and assessors for express, telegraph and telephone companies under the act entitled: "An act to amend and supplement sections 2777, 2778, 2779 and 2780 of the Rev. Stat. of Ohio," passed April 27, 1893, and certified by said board to the said auditor of Lucas county among the different cities, villages, townships and districts or parts thereof in Lucas county, and that the said auditor place such amount on the tax-list of Lucas county against the said express company to be assessed, and taxes thereon collected the same as taxes assessed and collected on other personal property, and that he do all other things enjoined on him by the act mentioned or by the law of Ohio, with respect to the levying and collecting of taxes on the valuation of the property of the company named, apportioned and certified to by said board, or that at the time and place of the return of said writ he show cause why he has not done so."

Order Book 13, page 383.

March 19, 1894. Alternative writ issued, returnable March 29, 1894.

Alternative writ returned and filed, endorsed:

"Service of the foregoing alternative writ is hereby acknowledged and the appearance of the defendant entered this 20th day of March, 1894."

CHAS. H. JONES,
Auditor Lucas County, Ohio.

April 5, 1894. Answer filed.
April 6, 1894. Demurrer to answer filed.
April 11, 1894. Printed briefs of attorney general filed.
April 11, 1894. Printed briefs of Thos. McDougall, plaintiff's attorney, filed.
April 14, 1894. Printed briefs of D. K. Watson filed.
May 1, 1894. Demurrer to answer sustained. Peremptory writ allowed.

O. B. 13, p. 430.

"This cause coming on to be heard on the demurrer of the plaintiff to the answer of the defendant, to the petition and alternative writ, was argued by counsel and submitted to the court;
91 whereupon, the court upon consideration, find said demurrer to be well taken and do sustain the same; and the defendant not asking and failing to plead further the court find upon the pleadings against the respondent, and that the alternative writ of mandamus heretofore issued herein ought to be made peremptory. It is therefore ordered that a peremptory writ of mandamus issue against the said Charles H. Jones, auditor of Lucas county, commanding him that he perform the acts heretofore alternatively ordered and that forthwith upon the service of this writ he apportion the amount of seven hundred and fifty-four dollars assessed against the National Express Company, being the proportion for Lucas county, of the total valuation of the property of said express company in Ohio, for the year 1893, to be taxed therein, as assessed and apportioned by the board of appraisers and assessors by express, telegraph, and telephone companies, under the act entitled "An act to amend and supplement sections No. 2777, 2778, 2779 and 2780 of the Rev. Stat. of Ohio," passed April 27, 1893, and certified by said board to him, among the different cities, villages, townships and districts, or parts thereof, in Lucas county, and that he place such amount on the tax-list of Lucas county against the said express company to be assessed, and taxes thereon collected the same as taxes assessed and collected on other personal property; and that he do all othes things enjoined him by the acts mentioned or by the laws of Ohio, with respect to the levying and collecting of taxes on the valuation of the property of the company named, apportioned and certified to him by said board. And it is further ordered that said defendant pay the costs of this action, to be taxed and on default execution is awarded therefor."

Sept. 28, 1894. Papers taken by the attorney general.
Oct. 3, 1894. Papers returned by the attorney general.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing transcript is a correct and full copy of the docket and journal entries in cause No. 3951, the State of Ohio, *ex rel.*, etc., *vs.* Chas. H. Jones, auditor, etc., as appears on the records of said court.

[SEAL.] In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this third day of October, A. D. 1894.

JOSIAH B. ALLEN, *Clerk.*

92–97 Cover endorsed as follows:

Supreme court of Ohio. Ohio, *ex rel.*, attorney general, etc., *et al.*, *vs.* Charles H. Jones, auditor, etc. No. 3951. Transcript of docket and journal entries.

And afterwards, to wit, on the 8th day of November, A. D. 1894, the following opinion of Judge Taft was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

(Omitted in printing, per stipulation of counsel. See side page 135.)

* * * * * * *

98–103 And afterwards, to wit, on the 8th day of April, A. D. 1895, the following opinion of Judge W. H. Taft was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel. See side page 135.)

* * * * * * *

104 And afterwards, to wit, on the 3rd day of May, A. D. 1895, the following amendment to bill was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Amendment to Bill.

United States Circuit Court, Southern District of Ohio, Eastern Division.

HENRY SANFORD, President of the Adams Express Company, *vs.* EBENEZER W. POE, JOHN K. RICHARDS, and WILLIAM T. COPE.	No. 673. Amendment to Bill.

The plaintiff by leave of court, for amendment to his bill, in lieu of the allegations of the tenth paragraph thereof that "said defendants in making said valuation and assessment were guided by the value of one share of your orator's capital, and in all respects as directed by the said act of April 27, 1893," says that even if said act of the General Assembly of Ohio is valid said assessment against

your orator's company is not valid because not made in accordance with law or upon the basis of the true value in money of the company's property in the State of Ohio as appears by the proceedings of the board upon the plaintiff's return.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Plaintiffs.

And afterwards, to wit, on the 3rd day of May, A. D. 1895, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

105 Journal entry—Journal C, p. 35.

United States Circuit Court, Southern District of Ohio, Eastern Division.

HENRY SANFORD, President of Adams Express Company, *vs.* E. W. POE *et al.*	Amendment of Bill Filed, Demurrer Sustained, Injunction Dissolved, Suit Dismissed, Appeal Allowed and Orders as to Transcript.

This day came the plaintiff and by leave of court filed a further amendment of his bill, the defendants agreeing that upon the consideration of the demurrer to the bill, as so amended, and of the motion to dissolve the injunction the plaintiff shall have the benefit of the averments of the bill, also of the statements set forth in Exhibit "B" to the bill and in the affidavits of the defendant, Poe, one dated February 26, 1894, and the other December 20, 1893, the same as if incorporated into the bill by amendment. Thereupon the motion to dissolve the injunction and the demurrer to the bill, as amended, are submitted to the court under said stipulation; on consideration whereof the court grants said motion and sustains said demurrer. The injunction is accordingly dissolved and the bill dismissed at the cost of the plaintiff.

Thereupon the plaintiff presented his petition for appeal to the United States circuit court of appeals for the sixth circuit and his assignment of errors, and the appeal is allowed in open court and the appeal bond fixed at $500.00.

Upon application of the plaintiff it is ordered that the order dissolving the injunction be and the same hereby is suspended pending the appeal, until or unless otherwise ordered by the circuit court of appeals, but upon condition that the appeal shall be forthwith docketed so that it may be heard at the May session of the circuit court of appeals.

It is further ordered if the case of the Western Union Telegraph Company, No. 672, be also appealed that in making the transcripts of record for appeal the documents and the opinions filed common to both cases may be omitted from one of the transcripts. It is also ordered that Schedule "D" attached to Exhibit "B" may be omitted from the transcript, inasmuch as the figures are summarized in the

record of the proceedings of the State board attached to the affidavit of Mr. Poe.

106 And afterwards, to wit, on the 3rd day of May, A. D. 1895, the following petition for appeal and assignment of errors was filed in the clerk's office of said court, clothed in the words and figures following, towit:

Petition for Appeal and Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Eastern Division.

HENRY SANFORD, President of the Adams Express Company, *vs.* E. W. POE *et al.*	No. 673. Petition for Appeal and Assignment of Errors.

The plaintiff prays an appeal from the final decree of this court to the United States circuit court of appeals for the sixth circuit, and assigns for error:

1. That said act of the General Assembly of the State of Ohio psssed April 27, 1893, is in contravention of the Constitution of the United States, especially of the interstate-commerce clause of section 8, article 1, of section 2, article 4, and of section 1, article 14.

2. That said act is in contravention of the constitution of the State of Ohio, especially of sections 2 and 5 of article 12, and of section 1 of article 2.

3. That said act does not provide a method for the taxation of the property of telegraph and express companies according to its true value in money, as required by the constitution of the State, or by uniform rule, as compared with other property in the State, but is really an attempt to enforce against express and telegraph companies the principal business of all of those doing business in the State of Ohio and in the United States, being interstate commerce, the payment of a tax for the privilege of doing such business in such State, by placing a fictitious value upon their property.

4. That said assessment made by the defendants against the plaintiff's company was not made upon the basis of the
107 money or market value of the property within the State of Ohio, but altogether upon other considerations, and that such sum assessed was not arrived at by any process of valuation, calculation or apportionment, but was an amount determined by said board arbitrarily, upon the simple consideration that said company in view of the market value of its capital shares, should pay in the State of Ohio taxes on the basis of a large assessment, wholly without reference to the value of any property owned or held by the company within the State; that said assessment was evidently made an odd, and apparently precise figure, instead of a round sum, for the purpose of giving it the semblance of an amount arrived at by some process of calculation, valuation or apportionment; that

the company's property in the State of Ohio, which consists altogether of horses, wagons, office furniture and tools used by the company in carrying on its business, is all of the ordinary kind whose true value in money is easily ascertained and determined by ordinary standards, and should be assessed for purposes of taxation against the express companies according to the true value of such articles, as determined by their market price, which is the method adopted by the State in valuing for taxation similar property, and all other property in the hands of all persons, associations or corporations.

5. That said suit of State *ex rel. vs.* Jones, auditor of Lucas county, in the supreme court of Ohio, was gotten up by the defendants in this suit during the pendency of the suit, and after the question as to the validity of the said act of the General Assembly of the State of Ohio had been argued, and was ordered for reargument in this suit, for the purpose of anticipating the judgment of this court upon the said question, and of any Federal court to which the case might be taken on appeal, and of controlling the decision of the Federal courts upon the questions involved; there being in fact no real controversy or subject-matter of controversy upon which to base such suit. And this court erred in withdrawing its original opinion upon the question of the constitutionality of said act and in adopting said opinion of the supreme court of Ohio.

6. That the court erred in sustaining the demurrer to the bill, as amended and supplemented, and in dismissing the bill.

7. That the court erred in granting the motion to dissolve the temporary injunction.

108 The plaintiff prays for an order suspending the order dissolving the temporary injunction pending the appeal.

RAMSEY, MAXWELL & RAMSEY,
Plaintiff's Attorneys.

And afterwards, to wit, on the 3rd day of May, A. D. 1895, the following supersedeas bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Supersedeas Bond.

Know all men by these presents that Henry Sanford, president of the Adams Express Company, as principal, and W. M. Barrett, as surety, are held and firmly bound unto the defendants in the case of Henry Sanford, president of the Adams Express Company, *vs.* E. W. Poe *et al.*, No. 673, United States circuit court for the southern district of Ohio, eastern division, their executors, administrators, and assigns, in the sum of five hundred dollars ($500); for the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Dated this third day of May, in the year of our Lord one thousand eight hundred and ninety-five.

109 Whereas the above-named Henry Sanford, president of the Adams Express Company, has prosecuted an appeal to

the United States circuit court of appeals for the sixth circuit to reverse a decree rendered by the circuit court of the United States for the southern district of Ohio, eastern division, in said case of Henry Sanford, president of the Adams Express Company, plaintiff, *vs.* E. W. Poe *et al.*, defendants:

Now, therefore, the condition of this obligation is such that if the said Henry Sanford, president, shall prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY SANFORD, *President*,
By LAWRENCE MAXWELL, JR., *Att'y*.
W. M. BARRETT.

110 UNITED STATES OF AMERICA, *Southern District of Ohio, Eastern Division,* } *ss*:

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had in the above-entitled cause and as the same appears of record and on file in the clerk's office of said court.

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Columbus, Ohio, this 13th day of May, A. D. 1895.

B. R. COWEN, *Clerk*,
By JANIE W. F. COWEN,
Deputy Clerk.

111 And afterwards, to wit, on May 21st, 1895, an order was made and entered upon the minutes of this court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.*	No. 321. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This day came the attorney general of the State of Ohio and moved that the above-entitled case be continued until the October term; to which counsel for the appellants object unless the attorney general stipulates that the assessments against the appellants for the year 1895 shall not be certified to the county auditors pending the decision of this court on this appeal.

And thereupon said motion of the attorney general is overruled, and it is ordered that the case be set for argument at the foot of the calendar for the June session unless continued meantime by stipulation in accordance with the appellants' suggestion aforesaid.

And afterwards, to wit, on June 4th, 1895, the following order was entered upon the minutes of said court, clothed in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.* } Appeal from the Circuit Court of the United States for the Southern District of Ohio.

112–126 This cause came on to be heard and was argued in part by Mr. Lawrence Maxwell, Jr., for the appellants and Mr. Thomas McDougall for the appellees, and the hearing was continued until tomorrow.

And afterwards, to wit, on June 5th, 1895, there was entered on the minutes of said court the following order, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.* } No. 321. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be further argued this day and was argued by Mr. J. K. Richards, attorney general of Ohio, for the appellees and by Mr. Lawrence Maxwell, Jr., for the appellants, and was submitted to the court.

And afterwards, to wit, on July 15th, 1895, the court delivered an opinion in said cause, which is in the words and figures following, to wit:

(Omitted in printing per stipulation of counsel. See side page 135.)

* * * * * * *

127 And afterwards, on the same day, to wit, on July 15th, 1895, the following decree was entered in said cause, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.* } No. 321. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the southern district of Ohio and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed that the decree of the circuit court in this cause be, and the same is hereby, affirmed with costs.

And afterwards, to wit, on August 3rd, A. D. 1895, a petition for appeal and an assignment of errors were filed in this court, which read and are in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, President of the Adams Express Company,
vs.
EBENEZER W. POE *et al.*

No. 321. Petition for Appeal and Assignment of Errors.

The appellant prays an appeal from the decree of this court, affirming the decree of the circuit court of the United States
128 for the southern district of Ohio, and assigns for error:

1. The several assignments of error set out in the assignment of errors before this court.

2. That this court erred in affirming the decree of the circuit court and should have reversed the same.

3. That the assessment complained of is not in fact an assessment against the appellant's company in respect of its property held or owned by it in the State of Ohio, but is really an attempt to enforce against the appellant's company, under the guise of taxing its property within the State, the payment of a tax upon its business, which is largely interstate commerce, or for the privilege of doing such business in this State by placing a fictitious and artificial value upon its property, and the appellant insists that said assessment and the statute of Ohio purporting to authorize the same are therefore in contravention of the Constitution of the United States, and especially of the interstate-commerce clause of section 8, article 1; section 2, article 4, and of section 1, article 14.

The appellant also prays for an order continuing the temporary injunction ordered by the circuit court pending the appeal in the Supreme Court of the United States.

LAWRENCE MAXWELL, JR., *Counsel.*

Appeal allowed, supersedeas fixed at $10,000.00, and it is ordered that the injunction granted by the circuit court continue in force, pending the appeal in the Supreme Court of the United States, until or unless otherwise ordered by the Supreme Court.

HORACE H. LURTON,
Circuit Judge and Judge U. S. C. Appeals for 6th Circuit.

Aug. 1, 1895.

129 And afterwards, on the same day, to wit, August 3rd, A. D. 1895, the following order was entered upon the minutes of said court, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.* — No. 321. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Upon presentation of petition for appeal to the Supreme Court of the United States and assignment of errors it is hereby ordered as follows, to wit:

Appeal allowed, supersedeas fixed at $10,000.00, and it is further ordered that the injunction granted by the circuit court continue in force, pending the appeal in the Supreme Court of the United States, until or unless otherwise ordered by the Supreme Court.

130 And afterwards, to wit, on August 7th, A. D. 1895, the following bond was filed in this cause, which reads and is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Sixth Circuit.

HENRY SANFORD, Pres., etc., *vs.* E. W. POE *et al.* — No. 321. Appeal from the Circuit Court of the United States for the Southern District of Ohio.

Supersedeas Bond.

Know all men by these presents that Henry Sanford, president of the Adams Express Company, as principal, and W. M. Barrett and L. C. Weir, as sureties, are held and firmly bound unto the appellees in the case of Henry Sanford, president of the Adams Express Company, appellant, *vs.* E. W. Poe *et al.*, appellees, No. 321 in the United States circuit court of appeals for the sixth circuit, their executors, administrators, and assigns, in the sum of ten thousand dollars; for the payment of which, well and truly to be made, they bind themselves, their successors, administrators, and executors, jointly and severally, by these presents.

Done this first day of August, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas the above-named Henry Sanford, president of the Adams Express Company, has prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered by the United States circuit court of appeals for the sixth circuit in said case of Henry Sanford, president of the Adams Express Company, appellant, *vs.* E. W. Poe *et al.*, appellees:

Now, therefore, the condition of this obligation is such that
131 if the said Henry Sanford, president, shall prosecute said appeal to effect and answer all damages and costs if he fail to

make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY SANFORD, *President*,
By LAWRENCE MAXWELL, JR.
W. M. BARRETT.
L. C. WEIR.

Accepted and approved.

H. H. LURTON, *Judge*.

August 1st, 1895.

132 The Supreme Court of the United States to Ebenezer W. Poe, auditor of the State of Ohio; James M. Wittemeyer, Philip Walther, Cloyd Manfield, Dwight Crowell, Augustus J. Frame, Joseph A. Henderson, H. L. Jennings, Frank X. Duerr, George S. Tinlin, Colin McDonald, Luther F. Young, Newton Speckman, Reuben Stahle, C. C. Schellentrager, Lewis C. Kilpstine, Lyman B. Lewis, R. F. Brown, T. J. Lindsay, Wm. H. Halliday, J. W. Jones, W. R. Baker, J. E. McClelland, John Hagerty, Madison M. Thompson, Henry J. Forker, James Reese, Nelson Armstrong, James R. Leeper, Alfred C. Blackburn, John M. Blocher, William D. Corn, William Bell, Jr., Charles H. Jones, W. D. Wilson, Conrad F. Benner, Boyd E. Furnas, W. T. Wood, H. W. Lewis, Lewis O. Cooper, Lewis F. Parsons, James N. Carr, Charles C. Guy, T. J. Morris, John T. Adams, S. R. Freeman, W. J. Johnson, W. A. Eidson, John P. Seward, P. White Brown, John Fangboner, Joseph T. Tracey, William Schlosser, Louis A. Loichot, John Grether, E. P. McCrocle, Edgar A. Walter, Samuel Hudson, James H. Cline, W. D. Gold, W. A. Patterson, Henry Mar-
133 shall, Theodore W. Parker, I. N. Walker, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the 1 day of Sept. next, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the sixth circuit, wherein Henry Sanford, president of the Adams Express Company, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1 day of Aug., in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and —.

HORACE H. LURTON,
Circ. Judge & Judge U. S. C. Appeals, 6th Circ.

Aug. 1, 1895.

Receipt of a copy of the foregoing acknowledged August 20, 1895.

J. K. RICHARDS,
Attorney General.

134 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record, together with the original citation, in the case of Henry Sanford, president of the Adams Express Company, *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.*, No. 321, October term, 1894, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this 18th day of September, 1895.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

[Endorsed:] United States circuit court of appeals for the sixth circuit. Henry Sanford, president of the Adams Express Co., *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.* Certificate for copy of record.

135 Supreme Court of the United States, October Term, 1896.

HENRY SANFORD, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 337.

HENRY SANFORD, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 338.

JAMES C. FARGO, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 339.

THOMAS C. PLATT, President, etc., *vs.* E. W. POE, Auditor, etc. } No. 340.

WESTERN UNION TELEGRAPH COMPANY *vs.* E. W. POE, Auditor, etc. } No. 352.

Stipulation.

The appellants propose to print in a separate pamphlet all of the opinions delivered in these cases in the circuit court and in the circuit court of appeals, also the opinion of the supreme court of Ohio in the case of State *ex rel. vs.* Jones, and also the Ohio taxing statutes of 1893 and 1894 involved in these cases.

It is therefore agreed that the various opinions and statutes may be omitted in the printing of the records.

LAWRENCE MAXWELL, JR.,
Counsel for Appellant.
FRANK S. MONNETT,
Attorney General of Ohio.
J. K. RICHARDS,
Of Counsel for Appellees.

136 [Endorsed:] Case No. 16,027, &c. Supreme Court U. S., October term, 1896. Term Nos., 337, 338, 339, 340, & 352. Sanford, pres't, &c., *v.* Poe, auditor; Same *v.* Same; Fargo, pres't, *v.* Poe, auditor; Platt, pres't, *v.* Poe, auditor; W. U. Tel. Co. *v.* Poe, auditor. Stipulation to omit parts of record in printing. Filed July 10, 1896.

Endorsed on cover: Case No. 16,027. U. S. circuit court of appeals, sixth circuit. Term No., 337. Henry Sanford, president of the Adams Express Company, appellant, *vs.* Ebenezer W. Poe, auditor of the State of Ohio, *et al.* Filed September 23rd, 1895.